129-355

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 148.

SARAH WALWORTH, EXECUTRIX OF JOHN B. WALWORTH, DECEASED, MARY H. SEVERANCE, HANNAH W. STRICKLAND, ET AL., APPELLANTS,

vs.

JOSEPH L. HARRIS AND JOHN M. PARKER, AS J. L. HARRIS & CO., ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED OCTOBER 17, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 148.

SARAH WALWORTH, EXECUTRIX OF JOHN B. WALWORTH, DECEASED, MARY H. SEVERANCE, HANNAH W. STRICKLAND, ET AL., APPELLANTS,

vs.

JOSEPH L. HARRIS AND JOHN M. PARKER, AS J. L. HARRIS & CO., ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Exhibit A[1]—Project of a lease of Point Chicot plantation between L. C. Bryan and J. S. Whitaker, agent, December 11, 1878	18	5
B[1]—Account of Bryan & Bro. with Halliday Bros., and affidavit thereto	22	6
C[1]—Promissory note of Bryan Bros. to Y. G. Carbery & Casey, May 6, 1880	25	8
E[1]—Deed of L. C. Bryan *et al.* to Jas. L. Harris *et al.* December 9, 1881	26	8
Answer of Bryan filed	50	14
Answer of J. E. Bryan	51	15
Appearance of Harris *et al.*	58	17
Order granting time to answer	59	17
Answer of Harris & Co., filed	59	17
Answer of Harris & Co.	60	18
Exhibit E—Account of Bryan & Bro. with Harris & Co.	74	22
D—List of cotton received from Point Chicot for account of Bryan & Bro., 1881-1882	81	27

JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 26, 1888.

	Original.	Print.
Exhibit C—Letter of Sells & Co., to Harris & Co., Dec. 27, 1881	83	29
B—Account of Bryan & Bro. with Harris & Co.	75	30
A—Account of Bryan & Bro. with Harris & Co.	87	31
Order setting cause for hearing, &c.	92	34
Replications	93	35
Petition of G. T. Stripling	95	36
Agreement as to final hearing and evidence	97	36
Statement of evidence	98	36
Deposition of J. E. Bryan	99	38
Z T. Carleton	107	39
Exhibit O—(J. E. Bryan) Letter of Harris & Co. to Bryan & Bro., Dec. 30, 1881	110	40
P— " Letter of Harris & Co. to Bryan & Bro., Jan. 9, 1882	110	40
O[1]— " Letters of Harris & Co. to Bryan & Bro., Jan. 10, 1882	111	40
R— " Sale No. 450 for account Bryan & Bro.	112	41
U— " Letter of Harris & Co. to Bryan & Bro., Jan. 14, 1882	113	41
Deposition of John S. Whitaker	116	42
Joseph L. Harris	121	43
Charles L. Revet	143	51
John M. Parker	152	54
John T. Whitaker	160	56
Exhibit H[1]—Letter of Bryan & Bro. to Harris & Co., Nov. 7, 1881	163	57
H[2]— " " " Nov. 21, 1882	164	58
H[3]— " Harris & Co. to Bryan & Bro., Nov. 26, 1881	166	58
H[4]— " " " Dec. 1, 1881	167	59
H[5]— " " Bishop Bros., Dec. 22, 1881	168	59
H[6]— " " Bryan & Bro., Apl. 23, 1881	170	60
H[7]— " " " Dec. 16, 1881	171	60
H[8]—Telegram L. C. Bryan to Harris & Co., Jan. 14, 1882	172	60
H[9]— " Harris & Co. to L. C. Bryan, Jan. 14, 1882	172	61
H[10]—Letter of Harris & Co. to Lowenstein Bros., Jan. 7, 1882	173	61
H[11]—Letter of Bryan & Bro. to Harris & Co., Dec. 21, 1881	174	61
H[12]— " " " Dec. 29, 1881	175*a*	62
H[13]— " " " Nov. 26, 1881	176	62
S—Account of Whitaker with Harris & Co.	179	63
W—Letter of Bryan to Whitaker, Dec. 29, 1879	180	64
P—Letter of Bryan & Bro. to Harris & Co., Jan. 11, 1882	181	64
P—Letter of Churchill to Harris & Co., Dec. 21, 1881	182	64
Deposition of Gilbert H. Green	188	66
George E. Pitcher	210	72
W. E. Kirk	236	78
C. J. Macumda	260	85
George E. Pitcher (recalled)	264	86
A. B. Cammack	276	89
John M. Parker	290	92
Norman Eustis	315	99
Blotter No. 6 J. L. H. & Co.—Accounts of Harris & Co.	342	105

	Original.	Print.
Exhibit A—(Dec. 1. 1883) Accounts of Harris & Co. with Green & Co.	345	108
D— " Accounts of Harris & Co. with Green & Co.	346	110
C— " Accounts of Harris & Co. with Green & Co.	347	110
E—(Dec. 3. 1883) Letter of Parker to Bryan & Bro., Jan. 10, 1882	348	111
B—(Dec. 1, 1883) Account of Harris & Co. with Green & Co	349	111
Green No. 2—Extract from cash book, &c.	351	113
Letter of notary to Clerk C. C. U. S., Dec. 7, 1883	354	114
Affidavit of Francis Fabre	355	114
Project of lease between Bryan and Whitaker, agent, Dec. 11, 1878	356	114
Decree	371	116
Motion for rehearing	363	116
Order denying rehearing	364	117
Order making new parties, granting appeal, &c.	365	117
Application for appeal, &c.	367	117
Clerk's certificate	369	118

1 Be it remembered that on the 26th day of April, 1882, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas John P. Walworth, Mary H. Severance, Hannah W. Strickland, Benjamin Strickland, John Walworth, Sarah Walworth, Ann Walworth, Mary Walworth Bradbury, Samuel A. Bradbury, William P. Halliday, Henry L. Halliday, Thomas W. Halliday, Barney Carbery, Thomas Casey, B. Lowenstein, E. Lowenstein, and A. L. Lowenstein, by D. H. Reynolds, C. H. Carlton, L. H. Springer, and U. M. & G. B. Rose, Esqrs., their solicitors, and filed therein their bill of complaint on the chancery side of said court against Joseph L. Harris and John M. Parker, the State of Louisiana, Z. T. Carlton, as trustee; Sarah E. Bryand, Joel E. Bryand, Luke Sells, and Miles Sells, which is in the words and figures following, to wit:

2 To the judges of the circuit court of the United States for the eastern district of Arkansas:

John P. Walworth, a resident of the city of Natchez and a citizen of the State of Mississippi, and Mary H. Severance, Hannah W. Strickland, and Benjamin Strickland, her husband; John Walworth, Sarah Walworth, and Ann Walworth and Mary Walworth Bradbury and her husband, Samuel A. Bradbury, all residents of the city of Cleveland and citizens of the State of Ohio; William P. Halliday, Henry L. Halliday, and Thomas W. Halliday, residents of and doing business in the city of Cairo under the firm name of Halliday Brothers and citizens of the State of Illinois; Barney Carbery and Thomas Casey, residents of and doing business in
3 the city of Memphis under the firm name of Carbery & Casey and citizens of the State of Tennessee, and B. Lowenstein, E. Lowenstein, and A. L. Lowenstein, residents of and doing business in the city of Memphis under the firm name of B. Lowenstein & Brother and citizens of the State of Tennessee, bring this their bill against Joseph L. Harris and John M. Parker, residents of and doing business in the city of New Orleans under the firm name of J. L. Harris & Co., and the State of Louisiana and Z. T. Carlton, as and in his capacity of trustee, and Sarah E. Bryant and Joel E. Bryant, all residents of Chicot county and citizens of the State of Arkansas, and Luke Sells and Miles Sells, residents of and doing business in the city of Saint Louis under the firm name of Sells & Co.
4 and citizens of the State of Missouri.

And thereupon your orators, who sue on behalf of themselves and such others having an interest in the subject of litigation as may choose to avail themselves of the benefit of the suit and to share its burdens, complain and say that on and prior to December 1st, 1881, Lemuel C. Bryan and Joel E. Bryan were merchants doing business at Columbia, in Chicot county, Arkansas, under the firm name of L. C. Bryan & Brother and were the owners individually or as partners of certain lands and other property, to wit: Pastoria plantation, in said county, consisting of the N. E. ¼ of sec. 8, fractional sec. 9, and the N. fr'l ½ of sec. 16, in T. 15 S., R. 1 west, containing some 800

acres; the west ½ of E. ½ of S. W. ¼ of sec. 32 and part of the W. ½ of S. W. ¼ of sec. 32, in T. 13 S., R. 3 W., containing some 93¼ acres, and known as the Miller place, and the N. E. ¼ of N. E. ¼ of sec. 31 and S. fr'l ½ of S. E. ¼ of S. E. ¼ of sec. 30, in T. 16 S., R. 1 W., containing some 50 acres, and known as the lower field, and being a part of what is known as the John Saunders place, and certain mules, horses, goods, wares, and merchandise and farming utensels and cotton, and also of open accounts and evidences of debt against residents of said county, besides cotton in New Orleans in the hands of their commission merchants, the said J. L. Harris & Co., and also of certain evidences of indebtedness against the estate of Walter Sessions, deceased, remaining unsettled in said county of Chicot, which evidences of indebtedness was pledged to said J. L. Harris & Co. as collateral, besides other property and evidences of indebtedness, as your orators are advised, but to them unknown, and were indebted to your orators and others, as your orators severally say, as follows—that is to say:

1st. Your orators, the said John P. Walworth, Mary H. Severance, Hannah W. Strickland, and Benjamin Strickland, in right of his wife; John Walworth, Sarah Walworth, Ann Walworth, and Mary Walworth Bradbury and Samuel A. Bradbury, in right of his wife, state that they are, as the heirs-at-law of Horace F. Walworth, deceased, the owners of Point Chicot plantation, in said county of Chicot, and that on December 11th, 1878, thro' their agent and attorney, John S. Whitaker, they leased the said plantation to said L. C. Bryan for five years from January 1st, 1879, to January 1st, 1884, for the annual rent of $5,500.00. A true copy of said lease is herewith filed, marked Exhibit A 1, and made part hereof, of which lease the said J. L. Harris & Co. were fully advised, having had same in their possession as security for a loan, and having paid the rent for the years 1879 & 1880, falling due on 1st of January, 1880 and 1881, respectively, and that the rent for 1881, amounting to said sum of $5,500.00, would become due and payable on January 1st, 1882, and was a lien upon the crops raised on said plantation under the laws of Arkansas, and by the terms of said lease and the large amount of the cotton raised on said plantation in 1881 had already gone into the hands of said J. L. Harris & Co. impressed with said liens for rent, while other portions of said crops were yet on the plantation being gathered and prepared for market.

2nd. And your orators, the said Halliday Brothers, state that the said L. C. Bryan & Brother were indebted to them in the sum of $796.95, besides interest thereon, for supplies furnished them during the year 1881. An itemized account, duly verified, is herewith filed, marked Exhibit B 1, and made part hereof.

3rd. And your orators, said Carbery & Casey, state that said L. C. Bryan & Brother were indebted to them in the sum of six hundred and fifty dollars, with interest from February 1st, 1881, as evidenced by their promissory note, bearing date May 6th, 1880, and signed by their firm name of L. C. Bryan & Brother, a copy of which note is herewith filed, marked Exhibit C 1, and made part hereof.

4th. And your orators, the said B. Lowenstein & Brothers, state that L. C. Bryan & Brother were indebted to them in the sum of $1,960.26, with interest from the — day of ——, at the rate of — per cent., as evidenced by their promissory note, bearing date —, and signed by their firm name of —— ——. A copy of said note is herewith filed, marked Exhibit D 1, and made part hereof, and
9 which said indebtedness was secured by pledges of cotton of the crop of 1881.

5th. And your orators further state that said firm of L. C. Bryan & Brother were indebted to said firm of Sells & Co. in the sum of $6,600.00, and to the commercial firm of Bishop Brothers, of Cincinnati, the sum of $1,032.52, and to others, making in all, as your orators are informed and believe, some $25,000.00; and the said L. C. Bryan & Brother being so indebted and being desirous of providing for speedy payment of same and of keeping their business and indebtedness concentrated in the hands of the said defendants, J. L. Harris & Co., who had been acting as their commission merchants for some time, the said L. C. Bryan, early in December, 1881, went to the city of New Orleans and there, on December 9th, 1881, arranged with said J. L. Harris & Co. for the payment of the debts of your orators & Sells & Co. and other creditors of said L. C.
10 Bryan & Brother, in all amounting to some $25,000.00, and also arranged for $10,000.00 to be invested in and to cover margins on futures in cotton, and to provide for and secure the payment of said sums of $25.000.00 and $10,000.00 so arranged for said L. C. Bryan & Brother executed their four promissory notes, three for $10,000 each and one for $5,000, and due, respectively, in 30, 45, 60, 75 days from the date thereof, and executed a deed of trust conveying to said Z. T. Carlton, as trustee, the property hereinbefore described, which deed of trust was signed and acknowledged by said Lemuel C. Bryan in the city of New Orleans on said December 9th, 1881, and by said Joel E. Bryan and wife in Chicot county on the 29th day of December, 1881, and afterwards filed and duly recorded in record of deeds for Chicot county. A duly certified copy of
11 said deed of trust is herewith filed, marked Exhibit E 1, and made part hereof.

And your orators further state that afterwards the said J. L. Harris & Co. refused to pay the amounts so due to your orators and specially provided for in said arrangement of December 9th, 1881, and secured by said deeds of trust, — that day purchased a large amount of "cotton futures" for said L. C. Bryan & Brother; that they received from said L. C. Bryan & Brother some 1,100 bales of cotton, including the cotton raised on Point Chicot and on which said heirs of Horace F. Walworth had a lien for rent of 1881, as also the cotton pledged said B. Lowenstein & Brothers; that said Lemuel C. Bryan died on January 16th, 1882, from the effects of morphine self-administered, being at the time said morphine was taken and for several days prior thereto greatly embarrassed by reason
12 of the neglect and refusal of said J. L. Harris & Co. to pay the debts of your orators and others according to the terms of their agreement of December 9th, 1881, and for which security

had been provided by said deed of trust, and that after the death of said Lemuel C. Bryan and without having paid the debts so secured to be paid to your orators by said deed of trust directed said trustee to sell, and said trustee did sell, on the — day of ——, 1882, a large number of mules, a part of the property in said deed of trust mentioned, and delivered the proceeds to said J. L. Harris & Co., and that said trustee, under the direction of said J. L. Harris & Co., has advertised the remainder of said property in said deed of trust mentioned, including the open accounts, to be sold on the 28th & 29th days of April, 1882, and that unless restrained said property will be sold and the proceeds pass to the said J. L.
13 Harris & Co., and that your orators are informed that prior to said sale of mules said J. L. Harris & Co. rendered to said firm of L. C. Bryan & Brother a statement of account charging them with the amount of the debt of said Sells & Co. The-, Sells & Co., refused to receipt for payment, and, though failing to give credit for profits on "cotton futures" sold and failing to account for collaterals in their hands and charging full amount of Sells & Co.'s debt, showing a balance due them of some $15,000, *and* allege that said sale is for payment of said balance, although, as your orators are informed and beleive, the said deed of trust was given solely to secure the payment of debts due to your orators and others and for margins on "cotton futures" and for future advances to be made by said J. L. Harris & Co., and that no part of debts to creditors of L. C. Bryan & Brother, save possibly the debt to
14 Sells & Co., has been paid by said J. L. Harris & Co., who ignored and virtually deny the rights of your orators in the premises. The premises considered, your orators pray that the said defendants, J. L. Harris & Co., and said defendant, Joel E. Bryan, may be compelled to render a full and perfect statement of the various items of indebtedness forming the consideration of said four promissory notes and said deed of trust to secure the same and how much, if any, of said indebtedness has been paid, and said defendants, Sells & Co. and Sarah E. Bryan and Z. T. Carlton, may be required to disclose any interest they may have in the property in said deed of trust mentioned or rights under said deed of trust, and that said J. L. Harris & Co. and said Joel E. Bryan may be required to render a full statement of the cotton raised upon
15 the Point Chicot plantation for 1881 and on which there was a lien for the rent of 1881 that went into the hands & paid J. L. Harris & Co., and also the number of bales of cotton that were pledged to secure the debt due B. Lowenstein & Brothers that went into the hands and paid J. L. Harris & Co.

And your orators further pray that the said J. L. Harris & Co. be decreed to pay to your orators the amounts severally due to them and assumed to be paid by said J. L. Harris & Co., and that the said Z. T. Carlton, as such trustee, and said J. L. Harris & Co., their agents and attorneys, be restrained from selling said property until the further order of this court, and that upon the failure of said defendants, J. L. Harris & Co., to pay the amounts that may be decreed against them, by a day to be fixed by the court, that said

property be sold by a commissioner of the court for the payment of same.

16 And said Walworth heirs pray that the court decree that the cotton raised on the Point Chicot plantation in 1881 that went into the hands of said J. L. Harris & Co. went impressed with the lien for the amount of the rent for 1881, and that they hold the same or the proceeds thereof as trustees for said Walworth heirs, and that the Walworth heirs have decreed against said J. L. Harris & Co. for the amount & for the rent with interest, and that your orators shall have generally and severally such other and further relief as the nature of the case may require.

Therefore will your honors grant unto your orators the writ of subpœna issuing out of and under the seal of this court to be directed to said defendants, commanding them and each of them by a day certain, &c., to appear before your honors in your cir-

17 cuit court for the eastern district of Arkansas and then and there answer the premises and abide the order and decree of the court, and also grant your writ of injunction directed to said defendants, Z. T. Carlton and Joseph L. Harris and John M. Parker, commanding them to desist from the sale of said property until the further order of the court.

C. H. CARLTON, L. H. SPRINGER,
& D. H. REYNOLDS,
Sol's for Walworth Heirs.
D. H. REYNOLDS,
Sol'r for Halliday Brothers and Carbery & Casey.
U. M. & G. B. ROSE,
For B. Lowenstein & Bro.

STATE OF ARKANSAS, *County of Chicot:*

L. H. Springer, agent for the above-named Walworth heirs, on oath states that he has read the above bill and that he knows the contents thereof, and the same is true so far as stated from his own knowledge, and as to other matters he believes it to be true.

L. H. SPRINGER.

Sworn to before me this 24th day of April, 1882.

GEO. T. WILKINSON, *Clerk.*

18 EXHIBIT A 1.

The following projet of a lease of Point Chicot plantation, in Chicot county, State of Arkansas, is this day entered into between L. C. Bryan, of said county & State, and J. S. Whitaker, agent and attorney of H. F. Walworth's heirs, owners of said property—that is to say:

This lease is to continue for five years—say from 1 January, 1879, to 1 January, 1884—at $5,500 a year, payable annually for the first four years on the 1 January, 1880, 1881, 1882, 1883, and for the 5th year on 1 December, 1883, it being understood that the said L. C. Bryan binds himself to put up twelve good and substantial single

quarters on the most desirable lands and to clear up as much land not now in cultivation as can be worked by the additional number of hands that the additional houses will accommodate, said
19 buildings to be as much as 18 x 16 feet, with front gallery, back gallery or shed room and chimney, and otherwise finished so as to be comfortable for the occupants; and it is further understood that during the pendency of this lease the said lessee may build any other quarters or houses he may deem necessary or profitable and clear up further lands upon the property; and that the twelve single houses and quarters built as aforesaid and such other improvements as may be added by the lessee and the clearing of said lands shall be at the cost and charge of said L. C. Bryan, lessee aforesaid.

And it is further understood and agreed that all the buildings of what nature soever upon the plantation, as also the fencing, shall be kept in good order during the pendency of this lease and all necessary repairs made by lessee in order to keep said buildings
20 and fences in good order, and that at the end of said lease the said property shall be delivered up in good order to the lessee, ordinary wear and tear excepted or fire or other calamity beyond lessee's control.

And it is further understood that the gin stands & machinery connected therewith are in good order at this time, shall be kept in like good order during the pendency of this lease, and returned in good order to the lessor, and if by any contingency said gin stands or machinery be destroyed by fire or otherwise the same will be rebuilt and restored within a reasonable delay by lessor.

And it is further understood that the lessor shall have his lien on the crop for the security and payment of his rent, as set forth in this lease.

And, further, on non-compliance with any obligation or
21 agreements set forth in this lease, or if said lessee shall at any time fail to pay the rent agreed upon, this lease shall be annulled and the contract at an end. Lessor reserves the privelege of selling the plantation on notice of twelve months to lessee.

Leland plantation, Dec. 11, 1878.

J. S. WHITAKER.
L. C. BRYAN.

22 EXHIBIT B1 IN BILL.

EXHIBIT A.

Mess. L. C. Bryan & Bro., Columbia, Ark., in Account with Halliday Bros., Cairo, Ill.

DR.

1881.					
M'ch	7.	50 bbls. meal @ 2.40	120		
		Insurance		80	
					120 80
May	10.	100 sacks corn, 14,030, @ 54	135	29	
		50 " oats, 8,670, 45	121	92	
		Insurance	1	59	
					258 80

May	27.	3 bbls. meal, 2.90	8 70		
		3 " Shamrock flour, 5.85	17 55		
		4 sacks oats, 600, 45	8 44		
		9 bales hay, 1,080, 1.10	11 88		
		Insurance	33		
					46 90
		Prepaid freight to Dermott sta.			11 60
		Shipped to Wm. Miller, Dermott sta.:			
May	27.	20 sacks oats, 2,830, @ 45	39 86		
		20 " corn, 2,850, 55	27 99		
		Insurance	45		
					68 30
		Shipped to Rob't Vance, Chicot:			
June	7.	50 sacks corn, 7,260, to Chicot			
		100 " " 14,412, 21,672, } to Walton sta., @ 50	212 85		
		Insurance	1 30		
					214 15
June	11.	10 bbls. Shamrock flour to Chicot, 5.90	59		
		30 h'fs " " " 3.10	93		
		25 " " " Walton, 5.90	147 50		
		50 h'fs " " " 3.10	155		
		Insurance	2 80		
					457 30
					1,177 85
		CR.			
May	5.	By cash			380 90
		Balance due Halliday Bros.			796 95

Cairo, Ills., Dec. 15, 1881.

23 H. H. Candee, U. S. commissioner & notary public, Cairo, Ills.

STATE OF ILLINOIS, *Alexander Co.:*

Before me, H. H. Candee, a notary public in and for said county and State, personally appeared Jacob Martin, to me personally well known, and made oath and deposed as follows: That he is now and has been for the year past and longer book-keeper and cashier of the firm of Halliday Brothers, of Cairo, Illinois; that the statement of account marked Exhibit A is true, just, and correct, and has not been paid nor any part thereof; that the articles specified in said account were all duly sold and delivered to said L. C. Bryan & Brother, of Columbia, Arkansas, and were in every particular good, sound, and merchantable, and were sold to said L. C. Bryan &
24 Brother at the prices named in said statement of account, which were the usual market prices for such goods in the Cairo, Illinois, market at the date of such sale; that there is no usury charged in said account—neither is there any credit or offset against the same—other than appears thereon, but that the full amount of seven hundred and ninety-six $\frac{95}{100}$ ($796.95) dollars is now justly due the said firm of Halliday Brothers, of Cairo, Illinois, from said firm of L. C. Bryan & Brother, of Columbia, Arkansas; and further saith not.

JACOB MARTIN.

Subscribed and sworn to before me by the said Jacob Martin, at Cairo, Illinois, this 15th day of December, A. D. 1881.

H. H. CANDEE,
Notary Public.

25 EXHIBIT C 1.

COLUMBIA, ARKANSAS, *May 6th*, 1880.

Dolls. 650.00. Febr'y 1 after date we promise to pay to the order of Carbery & Casey six hundred & fifty dollars at ——, value received.

L. C. BRYAN & BRO.

Filed and writ issued April 26, 1882.

[SEAL.] RALPH L. GOODRICH, *Clerk*,
By W. P. FIELD, *D. C.*

EXHIBIT E 1 TO BILL.

26 L. C. Bryan and J. E. Bryan to Z. F. Carleton, trustee, use of J. L. Harris & Co.

This indenture, made and entered into on this ninth day of December, A. D. 1881, by and between Lemuel C. Bryan and Joel E. Bryan, of Chicot county, Arkansas, parties of the first part, and Jas. L. Harris and John M. Parker, partners in trade — J. L. Harris & Co., of New Orleans, parties of the second part, and Z. T. Carleton, of the county of Chicot, State of Arkansas, trustee, of the third part, witnesseth:

That the said Lemuel C. Bryan and Joel E. Bryan, of the first part, for and in consideration of the sum of one dollar to them in hand paid and for the other good and valid considerations hereinafter mentioned, to wit, the securing of the debt and advances hereinafter specified and the faithful execution of all the obligations
27 and stipulations hereinafter contained on the part of the said parties of the first part to be kept and performed, hereby give or grant, sell, and convey unto the said party of third part, as trustee as aforesaid, the following-described property, viz: First, the following land situated in the county of Chicot, in the State of Arkansas, viz: All and singular that certain plantation known and designated as the Pastoria plantation, fronting *of* the Mississippi river, bounded below by lands of said J. L. Harris & Co. and above by lands of B. W. Smith, and containing about eight hundred acres, being composed of sections sixteen, nine, & eight, in Oden township; also fifty acres of land in what is known as the Mrs. John Saunders place, and one hundred acres in the Miller place, situated in the aforesaid county of Chicot, Arkansas, and for a more par-
28 ticular description of each of said tracts reference is hereby made to the record of deeds of said Chicot county, Arkansas, together with all the wood land thereto attached or adjoining the same, together with all wagons and carts, all yokes of oxen, plows and plow-gear, horses, mules, and all cattle, live stock and animals, machinery,

gin stands, presses, tools and implements of agriculture, and all other personality of any kind whatsoever now owned or hereafter acquired or placed on the above-described property by said parties of the first part; also any and all crop or crops of cotton and other products which may have been raised or gathered during the year eighteen hundred and eighty-one on the aforesaid plantation and tracts of land, together with about two hundred and fifty bales of cotton in seed lint and bales on the Point Chicot plantation, in the
29 said county of Chicot, Arkansas, that said parties of the first part have leased from the heirs of Walworth, and an undivided three-fourths interest in and to two hundred and twenty-five bales of cotton on the Leland plantation that said parties of the first part have leased from R. E. Craig, situated in Chicot county, Arkansas, as well as one hundred and fifty mules in Chicot county, Arkansas; also all the claims and demands which the said parties of the first part may have against any tenant, employee, or laborer for rent, hire, or other causes on the said property above described or on any other plantations or tracts of land in Chicot county, Arkansas:

To have and to hold all the above-described property, real, personal, and mixed, to the said trustee, his heirs, executors, and assigns, forever, in fee simple and with full warranty.

30 And the — Lemuel C. Bryan and Joel E. Bryan, of the first —, hereby covenant to and with the said party of the third part, his heirs, successors, and administrators, that the said Lemuel C. Bryan and Joel E. Bryan are the owners of said above-described plantation and tracts of land and of the aforesaid cotton in seed, lint, and bales on the aforesaid plantations, as well as said one hundred and fifty mules, property in fee simple, and that they will warrant and defend the title thereto against the claims of all persons whatsoever; but this conveyance is made for the following purposes and no other, to wit:

First. To secure to the said parties of the second part (viz., thirty-five thousand dollars) a debt, which is evidenced by four promissory notes drawn by said parties of the first part under their firm
31 name of L. C. Bryan and Brother, dated at New Orleans, La., the ninth day of December, 1881, drawn to the order of said J. L. Harris and Co. and payable at their office, in New Orleans, three thereof for the sum of ten thousand dollars, each at thirty, forty-five, and sixty days, respectively, after date, and the other thereof for the sum of five thousand dollars at seventy-five days after date, bearing interest at the rate of eight per cent. per annum from and after maturity until paid.

Second. Any advance in addition to said notes which the parties of the second part may make to the said L. C. Bryan & Bro., of the first part, in money, supplies, or otherwise, with eight per cent. interest per annum from the day and date of such advances being made until repaid; but the said parties of the second part shall not be bound to make any advances which in their discretion
32 and judgment it shall not be safe for them to do without

prejudice to this instrument for securing the advances made up to the date of their discontinuance.

The said parties of the first part further bind and pledge themselves to gather and to put into condition to ship to market, as soon as same can be done, the crop of cotton that they have or may raise or control from season to season during the period or term that any part of the aforedescribed indebtedness represented by the aforesaid notes may remain unpaid or due and owing to the said parties of the second part, or any other indebtedness hereinabove stipulated, and also bind and pledge themselves to ship said cotton from time to time, as soon as the same is gathered and in condition to be sent to market, to said parties of the second part, in New Orleans, to be sold by them.

33 In default of the said parties of the first part to ship and consign the cotton aforesaid to the said parties of the second part whenever notified to do so the said parties of the second part or their legal representatives shall have the right, and they are hereby authorized and empowered, to at once take possession of or to sequester the said cotton in seed, lint, or bales and ship the said cotton to the parties for sale in New Orleans at the current market prices, and, after deduction of all costs, charges, expenses, and commissions and attorneys' fees connected therewith, to hold the net proceeds for whatever amount may be due them now or hereafter.

That the said property, effects, and crops be kept insured in an amount not less than —— dollars, and by insurers or insurance company approved by the said parties of the second part,

34 to whom shall be transferred and delivered the policies or certificates of such insurance, which during the ginning season shall be extended and increased so as to cover the cotton in seed, loose, and in bales in and about the gin and cotton houses or under sheds or on said plantations. The said parties of the second part, without being bound thereto or responsible for not so doing, shall have the right of effecting such insurance for the account and risk of the said parties of the first part, in case of default, and to charge and recover all amounts by them advanced for that purpose; and also that, as a compensation to the said parties of the second part for effecting such insurance and obtaining policies, — are authorized to receive the script or accept the rebate allowed, if they prefer,

35 for their services, and the same to retain as their own; and it is further well agreed and understood that the net proceeds of the sale of any cotton shipped and all payments made to the said parties of the second part or any credit or credits for said parties of the first part are to be applied to the payment of any account, demand, or debt that the said parties of the second part may have against the said parties of the first part, held by them at that time, due or to become due, or to the said notes, as said parties of the second part may determine, and should partial payments be made by the said parties of the first part to said parties of the second part said partial payments, in case advances should afterwards be made by said parties of the second part, are to be regarded as deposits on which said future advances are based until such deposits are

exhausted, and this instrument is to be regarded as a continueing security for any balance whatever that may remain due and unpaid from said parties of the first part to said parties of the second part until final payment is made and their accounts closed, it being clearly understood that said parties of the second part shall have the right to impute payments as they may determine to whatever debt is held by them at the time due or to become due from said parties of the first part to said parties of the second part until all indebtedness by said parties of the second part is payed in full.

And it is further covenated and agreed to by and between the parties hereto that if said notes, all demands, due or accrued, and all obligations now existing and hereafter arising from said parties of the first part to said parties of the second part shall not be paid and satisfied at maturity, or either of them or any part thereof, as well as all amounts due under the aforesaid stipulated guarantee of commission upon a specified number of bales of cotton in full, or when due, or should any stipulation or obligations contained in this indenture and imposed upon the said parties of the first part to be kept and performed be violated in any way or respect, and not fully complied with by the said parties of the first part, then and in that event the said trustee shall, at the request of the said parties of the second part or their assigns, enter into and upon and take possession of all and singular the lands, tenements, hereditaments, and property, real, personal, and mixed, hereby granted or intended so to be, and proceed to sell and dispose of all of said property, at public auction, for cash, or of so much thereof as he may deem necessary to pay the indebtedness remaining due and unpaid hereunder, including all expenses of this trust, as herein agreed on. In case of a sale of land or real estate notice shall be given for thirty days by posting written notice of the time, place, and terms of sale at the court-house door of the said county of Chicot, State of Arkansas, and by advertisements published in some newspaper (if any such there be) issued or published in said county of Chicot, and the sale shall be made at the door of the court-house of the said county of Chicot between the hours prescribed by law for sales under public executions to the highest bidder for cash, and at which sale the said land shall be sold as one tract and *in solido* or under such subdivisions, either separately or as a whole, as said party of the third part or his successors may determine, in his discretion, on the approval of the said parties of the second part or their assigns.

In case of a sale of personality the notice shall be for ten days by posting written notice at the court-house door of the said county of Chicot, Arkansas, and the sale shall be at any place in the said county of Chicot, Arkansas, selected by said trustee. The said parties of the first part will deliver possession of said property to said trustee for sale, but if they fail to do so the said trustee may, at his discretion, sell the said property or any part thereof without having possession thereof, and if a sale of the land shall take place whilst the said parties of the first part remain in possession it is especially agreed and stipulated that the said parties of the

first part from the time of the sale shall be tenants of the purchaser at the sale till possession is surrendered; and it is furthermore agreed and stipulated that the rents, issues, and profits of said lands and other property herein conveyed which shall accrue and arise after the maturity of the debts herein secured are hereby
40 pledged and mortgaged as security for the payment of said debts.

And from the proceeds arising from such sale or sales the said party of the third part shall first pay the costs of enforcing this deed in trust; secondly, the promissory notes hereinbefore mentioned and described, together with such interest as may be due thereon, and any and all further sums of money that may be due and owing from the aforesaid parties of the first part unto the said parties of the second part on open account or by virtue of any of the obligations or stipulations herein contained or otherwise.

And, thirdly, the residue, if any, said trustee shall pay to the said parties of the first part, their heirs, executors, and administrators or assigns.

And in the event of such sale or sales the aforesaid party of the third part is hereby authorized and empowered, as the consti-
41 tuted attorney or agent of the said parties of the first —, to make, sign, acknowledge, deliver, and execute good and sufficient deeds and conveyances or bills of sale unto the said purchaser or purchasers of the hereinbefore described and granted real and personal property and premises and to transfer and convey unto him or them all the right, title, and interest of said parties of the first part of, in, and to the property or premises, real and personal, hereinbefore described and so sold under this instrument, which sale or sales and deeds so made and deeds so executed shall be forever a perpetual bar, both in law and equity, against the said parties of the first part, their heirs and assigns, and all other persons claiming or to claim the said premises or any part thereof by, from, or under them or either of them, the oath and bond of trustee being
42 waived, as also all right of equity of redemption in case of sale, and the purchaser or purchasers shall have absolute title in fee-simple.

It is further stipulated and agreed that all the expenses of executing and recording this deed, all costs, expenses, and attorneys' fees connected with examining into, supervising, arranging, and preparing this deed and of executing the trusts herein shall be paid by the said parties of the first part, and if paid by the said parties of the second part shall be treated and considered as advances made to the said parties of the first part and secured by this deed; and, further, that if any sale shall be made by the trustee herein he shall have and receive two per cent. commission on the amount thereof, which commissions are to be paid out of the proceeds of the
43 sale as expenses of executing the trust.

And it is further stipulated and agreed that if the said parties of the second part or their assigns or the said trustee resort to any legal proceedings to assert their rights or the rights of either of them as herein granted that the expenses thereof, including

attorneys' fees (not exceeding ten per cent. on the amount of the debt herein secured and then unpaid), shall be chargeable on said property as a part of the expenses of executing this trust.

It is further understood and agreed that if the said trustee shall die or remove from the State or in anywise neglect to act, the said parties of the second part may, by writing under their hand, appoint a new trustee, who shall have all the powers and rights herein vested in said party of the third part, and his acts shall be as
44 binding and as efficient in law, in all respects whatever, as if they were done by said party of the third part; and if the said parties of the second part shall die their executor or executors or administrators shall have the same power of appointments; and if part of the parties of the second part shall die the survivor or survivors or any one of them shall have the same powers of appointment, and the power to appoint a trustee or trustees under this deed may be exercised by any one of said parties of the second part useing therefor the name of his said firm and shall be as binding as if made by all, or said parties of the second part may file a bill in equity to sell all the said property if they prefer so to do.

45 The execution of this instrument is by parties of the second part and the third part is not required, but this instrument shall be valid to all intents and purposes upon its execution by the said parties of the first part.

It is further agreed and stipulated that the credit here given is upon the faith of the representations made by the said parties of the second part that they, Lemuel C. Bryan and Joel E. Bryan, are the absolute owners of all said real estate, cotton, mules, and other property and effects herein referred to and before enumerated, and that said parties of the first part will not sell, alien, or exchange or in any way dispose of, consume, or remove from said county any part of said property herein conveyed, or give any lien or
46 encumbrance thereon without the consent in writing of the parties of the second part. The enumeration and description of said lands and other property hereinbefore made is intended to be correct; but if any part be omitted, then all hereinbefore stated is embraced and conveyed.

And Sarah E. Bryan, wife of said Lemuel C. Bryan, for the above and divers other good and lawful considerations and purposes, hereby remises, releases, and forever quits claim unto the said trustee, his heirs, executors, and assigns, all her right, title, and interest or possibility of dower in and to all of the real, personal, and mixed property herein described and conveyed or intended to be conveyed.

Witness our hand and seal this ninth day of December, A. D. 1881.

L. C. RRYAN & CO. [SEAL.]
L. C. BRYAN. [SEAL.]
SARAH E. BRYAN. [SEAL.]
47 J. E. BRYAN. [SEAL.]
J. L. HARRIS & CO. [SEAL.]

STATE OF LOUISIANA, *City of New Orleans:*

On this ninth day of December, A. D. 1881, before the undersigned, a commissioner of the State of Arkansas, at said city of New Orleans, appeared Lemuel C. Bryan, of the firm of L. C. Bryan & Bro., to me well known as the same person whose name appears upon the within and foregoing deed as one of the parties grantor, and stated that he had executed the same for the purposes and considerations therein mentioned and set forth; and on the same — also voluntarily appeared before me Sarah E. Bryan, wife of said Lemuel C. Bryan, to me well known, and in the absence of her said husband declared that she had, of her own free will, signed and sealed the relinquishment of dower in the foregoing deed — executed the same
48 for the purposes therein contained and set forth and without undue influence or compulsion of her said husband.

[SEAL.] GEO. A. HERO,
Commissioner.

STATE OF ARKANSAS, }
County of Chicot, } *ss:*

On this 29th day of December, 1881, personally appeared before me, a notary public of the above-named county, J. E. Bryan, to me well known as party grantor in the foregoing instrument, and acknowledged that he had executed the same, for the uses, purposes, and considerations therein mentioned and set forth, as his voluntary act and deed.

R. RUDDICK, *N. P.* [SEAL.]

STATE OF ARKANSAS, *County of Chicot:*

I, George Wilkinson, clerk of the circuit court & *ex officio* recorder within and for the county and State aforesaid, do hereby cer-
49 tify that the preceding nineteen pages contain a true and correct copy of the instrument therein mentioned as the same appears on record in Record Book of Deeds, &c., A 1, on pages 300, &c., in my office.

Witness my hand and official seal, hereto affixed this the 17th day of January, 1882.

[SEAL.] GEO. WILKINSON, *Clerk.*

Filed April 26, 1882.

RALPH L. GOODRICH, *Clerk.*

50 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 10th day of April, anno Domini one thousand eight hundred and 82, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell,

district judge, presiding and holding said court, the following proceedings were had, to wit:

And on June 2, 1882, as follows:

J. P. WALWORTH *et al. v.* J. L. HARRIS & CO. *et al.*

Comes the defendant, J. E. Bryan, by R. E. Craig, Esq., his solicitor, and files *him* his answer; which answer is as follows:

51 *Answer of Joel E. Bryan.*

In the U. S. Circuit Court, Eastern District of Arkansas.

JOHN P. WALWORTH *et al.*, Complainant-,
vs.
J. L. HARRIS *et al.*, Defendants.

The respondent, Joel E. Bryan, for so much of complainants' bill as he is advised he is cited to answer, answering, says—

1. That it is true, as alleged in said bill, that on the first day of December, 1881, he and his brother were doing a mercantile business in the said town of Columbia, Chicot county, Arkansas, under the firm name of L. C. Bryan & Bro., and were the owners individually or as partners of the property mentioned in said bill, and that his said firm were indebted to the several complainants in the said bill as alleged, except that his said firm were not indebted to complainants, the heirs of H. F. Walworth, deceased, in any sum whatever, but that the debt mentioned as due said heirs was entirely an
52 individual debt of said L. C. Bryan, contracted as follows, to wit: That in December, 1878, his said brother, L. C. Bryan, individually rented from one J. Whitaker, agent for said heirs, said Point Chicot plantation for a term of five years, for which his said brother, L. C. Bryan, was to pay said agent at the end of each year the sum of fifty-five hundred dollars; all of which will more fully appear from a copy of said lease filed with complainants' bill as Exhibit "A 1."

2nd. Respondent states that in regard to the said several judgments against estate of Walter Sessions *estate* two of said judgments, to wit, one probated in favor of J. B. Johnson's estate for $197.50, with eight per cent. per annum interest thereon from 18th day of February, 1873, less 10 per cent. thereof, due D. H. Reynolds as attorney for prosecuting the collection thereof, and one in favor
53 of Joseph Rowan for $720.79, with interest due on said judgments, were the individual property of his said brother, L. C. Bryan, and the judgment for $300, favor of J. L. Robinson, was the property of his said firm, L. C. Bryan & Bro., and that all of said judgments were transferred to said J. L. Harris & Co. as collateral security for indebtedness due by his said firm to said Harris & Co. some time in the winters of 1878 & '9.

That no part of said judgments have been paid, and that said J. L. Harris & Co. have never credited to his said firm on account of said judgments.

3. Respondent admits the execution of the said deed of trust exhibited with said bill and the notes as alleged, except that respondent's wife did not gain in said deed.

The said deed was agreed on and given by his brother, L. C. Bryan, while in the city of New Orleans, La., in the absence
54 of respondent, so that this respondent knows nothing of his own knowledge of the terms of said agreement, the object and consideration of said deed, what debts, if any, the said J. L. Harris & Co. agreed to pay for said firm; that his brother, L. C. Bryan, told him that said J. L. Harris & Co. had agreed and were to pay the said debt due complainants, B. Lowenstein and others, their part due, but not mentioned in the said bill.

4. Respondent's brother rented a part of said Pastoria plantation in the spring of 1881 to tenants for $1,400, and took note therefor, due in the fall of said year; also the said Miller place for $300.00, and took note therefor, due some time in the latter part of the year 1881; which notes were transferred to complainants, B. Lowenstein & Co., as collateral security for the indebtedness due them by said L. C.
55 Bryan & Bro; that respondent's brother, L. C. Bryan, after, as he said, he had arranged with said J. L. Harris & Co. to pay said debt to Lowenstein, collected in cotton from the tenants on the plantation just mentioned about $1,400, and very little, if any, on the said Miller place, and shipped said cotton to credit of his firm to J. L. Harris & Co., which was sold by said J. L. Harris & Co. and credited to account of L. C. Bryan & Bro.

5. Respondent is informed and believes that his said firm, after said deed of trust was given and while the said J. L. Harris & Co. were holding some 900 bales of cotton and were carrying 2,500 bales "futures, actual delivery," for his said firm, gave Sells & Co. a time draft on said J. L. Harris & Co., due 25 to 28 Feb'y, 1882, all parties then being present in New Orleans, with the understanding that if said Bryan firm had assets to their credit at said date on ac-
56 count of said futures or the advance in said "spots," then said J. L. Harris & Co. were to pay said draft of sixty-five hundred dollars. Respondent applied to Sells & Co. for receipt of said account, which they have not given, and this respondent believes if said Harris & Co. ever paid the said Sells & Co. the said amount it was by agreement to be refunded if said Harris & Co. fail to make the same under the said deed of trust.

6th. L. C. Bryan & Brother shipped of cotton grown on Point Chicot plantation in the year 1881 some four hundred and sixty-seven bales of cotton, all of which were shipped to their own accounts to Mess. J. L. Harris & Co., to be by them sold as cotton factors and proceeds applied to payment of advances made their firm by said J. L. Harris & Co. The whole of said cotton belonged to the said firm of L. C. Bryan & Brother, taken in the regular course of business, and the last shipment made on the 19th
57 day of December, 1881, sold a few days thereafter, and account sales rendered by said J. L. Harris & Co.

That if the said cotton was "impressed" with anything besides the shipping brand of his said firm this respondent did not see it.

7th. The said trustee has fully executed and sold all the property in the said deed mentioned, as alleged in plaintiffs' bill—February 4, 1882, personal property for $3,179; April 29, 1882, personal property for 207; Ap'l 28, 1882, real estate for 4,900—all of which said sales were made for cash and proceeds paid by said trustee to said J. L. Harris & Co., and yet respondent is informed they are not satisfied.

Having fully answered, respondent prays to be hence dismissed with his costs.

ROB'T E. CRAIG,
Sol. for Respondent.

STATE OF ARKANSAS, *County of Chicot:*

58 This day appeared before me Joel E. Bryan, personally well known to me, —, being first duly sworn, stated on oath that he had read the foregoing answer, and that the statements made therein on his own knowledge are true and statements made upon information he beleived to be true.

J. E. BRYAN.

Subscribed and sworn to this 30th day of May, 1882.
A. C. NEWSOME, *J. P.*

Filed June 2, 1882.
RALPH L. GOODRICH, *Clerk.*

And on June 5, 1882, as follows:

JOHN P. WALWORTH *et al. v.* JOSEPH L. HARRIS *et al.*

59 Come the defendants, Joseph L. Harris, John M. Parker, as J. L. Harris & Co., and Z. T. Carlton, trustee, by J. F. Robinson and Compton, Battle & Compton, Esqs., their solicitors, and enter herein their appearance.

And on July 3, 1882, as follows:

JOHN P. WALWORTH *v.* JOSEPH L. HARRIS *et al.*

Comes the complainant, by U. M. & G. B. Rose *Rose*, Esqs., his solicitors, and come the defendants, by Compton, Battle and Compton, Esqs., their solicitors, and by consent of parties leave is given the defendants until the first day of the next term to answer.

And on October 20, 1882, as follows:

JOHN P. WALWORTH *et al. v.* J. L. HARRIS & Co. *et al.*

60 Come J. L. Harris & Co., by J. F. Robinson and Compton, Battle and Compton, Esqs., their solicitors, and file herein their answer.

Which answer is as follows:

United States Circuit Court for the Eastern District of Ark.

JOHN P. WALWORTH *et al.*
vs.
J. L. HARRIS and JOHN M. PARKER, Merchants and Partners under the Style of J. L. Harris & Co., *et al.*

The joint and separate answer of Joseph L. Harris and John M. Parker, who compose the firm of J. L. Harris & Co., to the bill of complaint herein.

These defendants, merchants and partners as aforesaid, now and at all times hereafter saving and reserving all manner of benefit and advantage of exception to the many errors and insufficienc-es in the complainants' said bill of complaint contained, for answer thereto or unto so much or such part thereof as these defend-
61 ants are advised is material for them to make answer unto, answering, say—

That it is true, as alleged in said bill, that Lemuel C. Bryan and Joel E. Bryan were merchants and partners doing business at Columbia, in Chicot county, Arkansas, under the firm name of L. C. Bryan & Brother, and that these defendants were acting as commission merchants.

And these defendants, further answering, say that on the 9th day of December, 1881, the said L. C. Bryan & Bro. were indebted to these defendants in the sum of about twenty-one thousand seven hundred and ninety-eight $\frac{80}{100}$ dollars ($21,798$\frac{80}{100}$), which will more fully and particularly appear by reference to an itemized account current and statement hereto attached, marked Exhibit "A," and made part hereof, and that to cover and secure the payment of this indebtedness and of any further amounts that might thereafter ac-
crue for supplies, cash, or other advances, and to provide
62 margins for any purchases that the said L. C. Bryan & Bro. might make in contract cotton, commonly called futures, and for no other consideration, they, the said L. C. Bryan & Bro., made the four several promissory notes and the deed in trust mentioned in the said complainants' bill; that one of said notes (that for $10,000, maturing the 10th February, 1882) was discounted by these defendants, and the net proceeds thereof placed to the credit of the special cotton purchase account of the said L. C. Bryant & Bro. with these defendants, as will more fully and at large appear by reference to an itemized statement of said cotton purchase account hereto attached, marked Exhibit "B," and made part hereof, and that the other three said notes were discounted by these defendants and the net proceeds of the same placed to the credit of their general account with these defendants, as will more particularly appear by reference to
63 said Exhibit "A," hereto attached.

And these defendants say that the allegations in said bill of complaint that the promissory notes and deed in trust aforesaid were made for the purpose of providing for the payment of the indebtedness of the said L. C. Bryan & Bro. to their several creditors through these defendants and that these defendants agreed to make such

payment are utterly untrue in every particular, and these defendants positively deny the same, and aver the truth to be that said notes and deed in trust were made to cover and secure the indebtedness of the said L. C. Bryan & Bro. to these defendants and to provide for the purchase of cotton futures, as above stated, and for no other purpose; and these defendants further say that prior to the making of said deed in trust the said L. C. Bryan & Bro. did request these defendants to pay Bishop Bros., of Cincinnati, and B.
64 Lowenstein, of Memphis, but these defendants refused to do so, except in so far as they had previously committed themselves to Bishop Bros. for $1,000, and that amount, with accrued interest of $3.80, say $1,003.80, these defendants did pay on the 22nd day of December, 1881, and here these defendants take occasion to say that they are not aware that the death of Mr. L. C. Bryan was the result of suicide; but, however that may be, as they were not nor had been under any promise or engagement to pay his debts, the charge that these defendants are in any manner responsible for his death is on a par with other pretenses in said bill of complaint contained, and these defendants repel it as false, impertinent, and unjust; and these defendants, further answering, say that it is not true, as alleged in said bill of complaint, that these defendants, pursuant to the pretended arrangement
65 falsely charged in said bill, paid $6,500 of the indebtedness of said L. C. Bryan & Bro. to Sells & Co., or any part thereof. On the contrary, these defendants aver that on the 27th of December, 1881, the said Sells & Co. handed to these defendants a draft, drawn on them by said L. C. Bryan & Bro. in favor of Sells & Co. for $6,500, payable at 60 days after date, and requested these defendants to accept said draft, charge the amount thereof to the account of the said L. C. Bryan & Bro., and hold the same until its maturity; which said draft so handed to these defendants was accompanied by the written agreement and guaranty of the said Sells & Co. to the tenor and effect that if at the maturity of said draft the said L. C. Bryan & Bro. should not have sufficient money or its equivalent in cotton in the hands of these defendants to pay said draft, after
66 first paying what they might then owe these defendants, they, the said Sells & Co., would take up the draft so accepted by these defendants and provide for its payment themselves, and that pending the maturity of said draft it should be competent for said L. C. Bryan & Bro. to make drafts against shipments to these defendants and to buy and sell cotton for future delivery, and that any amount so paid out by these defendants for them should have preference in payment over said acceptance given to said Sells & Co. Upon the condition and guaranty aforesaid these defendants did accept said draft and did charge the same to the account of the said L. C. Bryan & Bro.; and these defendants aver that at the time of the maturity of said draft the said L. C. Bryan & Bro. had no money or its equivalent in their hands with which to pay said draft, according to the terms of the agreement aforesaid, but, on the con-
67 trary thereof, were then and ever since have been otherwise indebted to these defendants in a sum largely in excess of the amount of said draft.

A copy of the agreement and guaranty of the said Sells & Co. herein referred to is hereto attached, marked "Exhibit C," and made part hereof.

And these defendants, further answering, state that for the season 1881–1882 four hundred and twenty-five bales of cotton were shipped to these defendants by the said L. C. Bryan & Bro. from Point Chicot landing, in the State of Arkansas, and that the same were received by these defendants at their place of business, at New Orleans, in the State of Louisiana, as will more fully appear by reference to a list of said bales of cotton hereto attached, marked Exhibit "D," and made part hereof; but what number, if any, of said bales of cotton were grown on the plantation known as
68 Point Chicot these defendants do not know, nor have they any knowledge or information sufficient to warrant a belief in regard thereto.

And these defendants, further answering, say that it is true that they did at one time, in the year 1880, have in their possession the written contract of lease mentioned in said bill of complaint on said Point Chicot plantation as collateral security for the payment of six hundred dollars loaned to one Whittaker, who represented that he owned a one-sixteenth part thereof, and to whom said contract of lease was soon thereafter returned, he having paid the sum of money so loaned; that it is also true that they paid the rent of said Point Chicot plantation for the year- of 1879 and 1880, at the request of the said L. C. Bryan & Bro., in the ordinary course of their dealings with them, the account of the said L. C. Bryan & Bro. with these defendants being in such condition as to
69 justify these defendants in so doing, but these defendants were never under any committal or especial obligation to make such payments.

And these defendants aver that while they had said contract of lease in their possession they gave so little attention to it that they did not ascertain all the precise terms thereof, and after its return to said Whittaker thought no more about it and paid no further attention to it, and that at the several times these defendants received and sold said cotton shipped to them from Point Chicot landing by the said L. C. Bryan & Bro. they had no knowledge or information as to whether said contract of lease was still in force or had expired by lapse of time or had otherwise ceased to exist, nor had they any knowledge or information of a lien of any character then existing on said cotton, and therefore deny that there was any.

And these defendants are advised that even if any such
70 lien did exist under the laws of the State of Arkansas the same did not follow and attach to said cotton in the hands of these defendants in the State of Louisiana.

And these defendants, further answering, say that if it be true, as alleged in said bill of complaint, that the said B. Lowenstein & Bro. had cotton pledged to them to secure the payment of their said claim against the said L. C. Bryan & Bro., which was afterward shipped to these defendants by said L. C. Bryan & Bro., for and on their account with these defendants, they, the said B. Lowenstein &

Bro., as these defendants are advised, lost any lien they may have had arising from such pledge by permitting said cotton to be taken from their possession and shipped as aforesaid.

But, however this may be, these defendants aver that they have never had at any time any knowledge or information of any lien of any kind in favor of said B. Lowenstein & Bro. on any of the
71 cotton shipped to them by the said L. C. Bryan & Bro. as aforesaid.

And these defendants, for further answer, say that the said L. C. Bryan & Bro. assigned to them, as collateral security, the following claims against the estate of Walter Sessions, deceased, and none other, to wit: A claim in favor of Mrs. Kate Johnson, as adm'r of the estate of J. B. Johnson, dec'd, for $197.04, with 8 per cent. per annum interest from February 18th, 1873; a claim in favor of Joseph Roman for $588.50, with interest, at 6 per cent. per annum, from September 13th, 1873, and a claim in favor of R. M. Fayrls for $207.42, with interest, at 6 per cent. per annum, from Sept. 11th, 1873, on which claims these defendants have not as yet realized anything.

And these defendants deny that they hold as collateral any other evidence of indebtedness or other property of said L. C. Bryan or L. C. Bryan & Bro.

72 These defendants, further answering, say that they are informed and beleive that Z. T. Carlton, trustee in said deed in trust, has sold all the property mentioned in said trust deed; a full report of the net proceeds of such sale these defendants have not yet received; but from the best information these defendants have been able to get touching said sale they verily beleive and state the fact so to be that after placing the net proceeds of such sale to the credit of the said L. C. Bryan & Bro. there will still be a balance of indebtedness due from them to these defendants on the 30th day of June, 1882, being about the sum of $15,536.57, with interest, at 8 per cent. per annum, from that date, as will more fully and at large appear by reference to an itemized account current and statement hereto attached, marked Exhibit "E," and made part *of* hereof, in connexion with said statement of said cotton purchase account, hereinbefore mentioned and marked Exhibit "B."

73 All of which matters and things the said defendants are ready to aver, maintain, and prove as this honorable court shall direct, and hereby pray to be hence dismissed with their reasonable costs and charges in that behalf sustained.

J. F. ROBINSON AND
COMPTON, BATTLE & COMPTON,
Sol's for J. L. Harris & Co.

STATE OF LOUISIANA, *City of New Orleans:*

I, Joseph L. Harris, do solemnly swear that all of the statements made in the above answer of my own knowledge are true, and those derived from information of others are beleived to be true.

J. L. HARRIS.

Sworn to and subscribed before me, undersigned notary, at New Orleans, this Sept. 29, 1882. HERO, *Notary Public.*

74 EXHIBIT "E."

Mess. L. C. Bryan & Bro., Columbia, Ark., in Account Current with J. L. Harris & Co. *Ac. #4.*

1881. DR.

May	25.	To balance as per ac. rendered due as cash					1,416 09	230	90	46
	"	" acceptance due 1-4 Nov., '81					3,402 54			
	"	" " " " "					1,459 88			
							4,862 42	67	90	49
	30.	" cash p'd s. d. favor Geo. T. Wilkerson				13 75				
	"	" cash p'd s. d. favor I. Sayer				105 50				
							119 25	225	7	44
	31.	" " " " ste'm'r Dean Adams					37 00	224	2	30
June	1.	" " " " " " J. M. White					40 00	223	2	47
	2.	" " " " J. Sayer					100 00	222	6	16
	4.	" " " " Bark of Greenville					8 17	220		49
	7.	" " " " R. Buddecke					16 75	217	1	02
	8.	" " " " ste'm'r C. of Helena				84 17				
	"	" " " " Halliday Bros.				380 90				
							465 07	216	27	90
	9.	" am't their " " I. Sayer					56 25	215	3	35
	13.	" cash " " do.					68 75	211	4	05
	16.	" " " " L. Jacquemine					50 00	208	2	89
	18.	" " " " I. Sayer					121 53	206	6	97
	20.	" " " " st'r Belle of Memphis					43 34	204	2	44
	22.	" " " " I. Sayer				28 47				
	"	" " " " Sells & Co.				1,232 98				
							1,261 45	202	70	76
	23.	" " " " st'm. G'd Tower					35 84	201	2	01
	24.	" " " " I. Sayer					110 15	200	6	11
	27.	" " " " st'r City of Alton				72 25				
	"	" " " " Langstaff G. Proudfit				237 39				
							309 64	197	16	96
	29.	" " " " Rice, Stix & Co.					110 47	195	5	96
	30.	" " " " I. Sayer					10 77	194		59
July	2.	" " " " do.					29 00	192	1	55
	5.	" " 4 " " do.				40 00 45 00 36 14 24 09				
	"	" " " " S. Lehman & Son				145 23 110 00				
							255 23	189	13	39
	7.	" " " " R. Ruddick					16 75	187		89
	8.	" " " " Mrs. Annie G. Craig				100 00				
	"	" am't your " " I. Sayer				50 00				
							150 00	186	7	75
	11.	" cash " " st'm'r City of Providence					21 85	183	1	11
	13.	" " " " R. Ruddick					21 00	181	1	05
	14.	" " " " I. Sayer					50 87	180	2	55
	16.	" " 3 " " do.				49 13 41 80 50 00				
							140 93	178	6	97
	21.	" am't your " " S. Friedman					50 00	173	2	40
	22.	" cash " " I. Sayer					125 00	172	5	97
	27.	" " " " st'r City of Helena					47 10	167	2	17
		Forward					10,150 67	---	396	62

75

1881.

July	27.	To amount brought forward				10,150	67	---	396 62
Aug.	1.	" cash p'd s. d. favor I. Sayer				100	00	162	4 50
	2.	" Carlton & Bro.				46	05	161	2 06
	4.	" I. Sayer				75	00	159	3 31
	11.	" steamer St. John				31	00	152	1 31
	15.	" I. Sayer				69	98	148	
		" " steamer Belle of Memphis				33	38	148	4 24
	18.	" fire insurance on building at Luna for 1 year, 14th Aug., 1882, $2,000, @ 3½ %				70	00	145	2 82
	22.	" cash p'd s. d'fts favor I. Sayer	79 90						
			65 80						
						145	70	141	5 71
	24.	" " " s. d. " R. Ruddick	14 25						
		" " " " " " Rice, Stix & Co.	147 90						
						162	15	139	6 25
	25.	" invoice sundries per st'r St. John	163 89						
		" " " molasses & flour, ac. Wm. Miller	30 44						
						194	33	138	7 44
	26.	" cash p'd 2 s. d'fts favor I. Sayer	100						
			92 50						
			192 50						
	26.	" cash p'd s. d. favor L. Jacquemine	50 00						
						242	50	137	9 21
	29.	" invoice meal & pork from St. Louis, p'r City of Greenville, Aug. 27, '81				684	42	136	25 83
Sept.	1.	" cash p'd s. d. favor st'r Belle of Memphis	36 00						
		" " cash p'd s. d. favor st'r G'd Tower	18 00						
						54	00	131	1 96
	7.	" " " " " I. Sayer				54	15	125	1 87
	9.	" " " " st'r City of Greenville				52	50	123	1 77
	10.	" " " " R. Ruddick				15	75	122	54
	13.	" " " " B'l. of Greenville				500	00	119	16 52
	14.	" " " " I. Sayer				79	75	118	2 62
	15.	" invoice tobacco & molasses p'r st'r Ed. Richardson				168	22	117	
	17.	" invoice meal & pork from St. Louis, p'r G'd Tower, Sept. 15, '81				709	03	117	28 50
	19.	" cash p'd s. d. favor S. H. Holland				31	44	113	97
	26.	" invoice bagging, ties, &c., p'r st'r Ed. Richardson	170 45						
		" " invoice bagging, ties, &c., p'r st'r Ed. Richardson	318 40						
		" " invoice bagging, ties, &c., p'r st'r Ed. Richardson	318 40						
						807	25	106	23 76
	27.	" cash p'd s. d. favor I. Sayer	200 00						
		" " " " " A. M. Paxton & Co.	63 75						
		" " " " " B'k of Greenville	500 00						
						763	75	105	22 29
	28.	" " " " st'r Grand Tower				56	87	104	1 65
	29.	" " " " M. E. Mayer	86 52						
	29.	" invoice sundries p'r st'r C. P. Chouteau	119 45						
						205	97	103	5 90
Oct.	4.	" cash p'd s. d. favor B'k of Greenville	500 00						

1881.							
Oct.	4.	To cash p'd s. d. favor st'r Ed. Richardson up. fr't on bagging, &c.	24 50	524 50	98	14	26
		Forward		16,028 36	---	591	91
76							
1881.							
Oct.	4.	To amounts brought forward		16,028 36	---	591	91
	7.	" cash p'd st'r Ed. Richardson up. fr't on sundries		5 00	95		14
	11.	" invoice supplies from St. Louis p'r st'r Greenville, Oct. 18, '81		743 80	94	19	42
	"	" cash p'd s. d. favor Bark of Greenville	500 00				
	"	" cash p'd s. d. favor S. Friedman	25 00	525 00	91	13	27
	13.	" " st'r Ed. Richardson up. fr't on sundries		7 25	89		17
	14.	" cash p'd s. d. favor Ivey & Mahood		214 27	88	5	22
	18.	" " Bark of Greenville		500 00	84	11	66
	20.	" " st'r City of Greenville		55 70	82	1	27
	24.	" " E. C. Markam & Co.		54 00	78	1	17
	25.	" " Bark of Greenville		500 00	77	10	70
	26.	" invoice tobacco p'r st'r C. P. Chouteau		60 88	76	1	29
Nov.	1.	" " supplies from St. Louis p'r st'r City of Vicksburg, Oct. 29, '81		632 80	73	12	84
	"	" cash p'd s. d. favor Bark of Greenville		500 00	70	9	72
	3.	" " " " L. Jacquemine		161 10	68	3	04
	14.	" " 2 " " do.	87 25 41	128 25			
	"	" " " " City of Vicksburg		52 50			
	"	" cash p'd 2 s. d. favor M. E. Mayer		334 40			
				515 15	57	8	15
	17.	" am't of L. Jacquemine		34 00			
	"	" invoice bagging & ties p'r st'r H'y Frank		152 75			
	"	" invoice bagging & ties p'r st'r H'y Frank		221 56			
				408 31	54	6	12
	21.	" cash p'd s. d. favor F. H. Williams		150 00	50	2	09
	23.	" " " st'r C. F. Chouteau		300 00	48	4	00
	28.	" " 2 " I. Sayer	200 00 193 24	393 24	43	4	70
	"	" am't your note our favor due 1-4 Nov., '81, for		539 37	67	10	04
	"	" " " " " 15-18 " "		5,255 80	53	77	39
	29.	" " " " " 25-28 " "		5,268 09	43	62	92
Dec.	5.	" cash p'd s. d. favor L. Jacquemine	170 00				
	"	" " " " I. Sayer	198 70	368 70	36	3	69
	8.	" " " st'r C. P. Chouteau	500 00				
	"	" " " I. Sayer	93 70	593 70	33	5	45
	9.	" " " do.	157 60				
	"	" " note Thos. Simms					
	"	" " interest on same		814 93	32	7	25
	13.	" " s. d. favor Bark of Greenville		500 00	28		
	"	" am't your note our favor due 10-13 Dec., '81		5,286 65	28	45	01
	15.	" cash p'd s. d. favor I. Sayer	250 00				
	"	" " " " B'k of Greenville	500 00				
	"	" cash p'd s. d. favor W. H. Williams	400 00	1,150 00	26	8	31

1881.							
Dec.	16.	To cash p'd s. d. favor L. Jacquemine		297 00	25	2	06
	19.	S. Friedman		316 75	22	1	94
	21.	I. Sayer		51 25	20		29
		Forward		42,197 10	---	931	23
77							
1881.							
Dec.	21.	To amount brought forward		42,197 10	---	931	23
	22.	" cash p'd note favor Bishop Bros. due 4 inst.	1,000 00				
		" " cash p'd interest on same from maturity	3 80				
				1,003 80	19	5	30
	23.	" cash paid s. d. favor st'r C. P. Chouteau		800 00	18		
		" " your note our favor due 20–23 Dec., '81		5,299 10	18	30	49
	24.	" cash p'd s. d. favor L. Jacquemine		622 28	17	2	94
	26.	" " " " I. Sayer		75 00	15		31
	29.	" your note our favor due 26–29 Dec., '81		5,306 60	12	17	69
	30.	" cash p'd s. d. favor st'r H'y Frank.	300 00				
		" " Luna Plant for ginning charges on about 600 b. c., seasons 1880–'81 & '81–'82	300 00				
				600 00	11	1	84
1882.							
Jan'y	2.	" cash p'd 2 s. d'fts favor I. Sayer {	29 43 113 40				
				142 83	8		31
	4.	" " s. d. " do.		49 85	6		09
	5.	" acceptance your d'ft favor Sells & Co., due 25–28 Feb'y, '82		6,500 00	49	88	47
		" " cash handed you as per receipt		25 00	5		04
	9.	" invoice supplies from St. Louis p'r Grand Tower, 5 Jan'y	183 32				
		" " invoice supplies from St. Louis p'r Grand Tower	210 08				
				393 40	5		55
	10.	" cash p'd A. Hero, notary, for drawing ac. deed of trust Dec. 9, '81	15 00				
		" " Carlton & Bro., am't p'd out for recording deed of trust as pa. Z. T. Carlton, ag., letter of Jan'y, '82	7 00				
				22 00			
		" " balance of interest to date		718 84			
		Balance carried down		9,261 24			
				73,017 04	---	990	79

E. & O. E.

Recapitulation.

Against the credit of	9,261 24
and the 7 b. c., estimated $45 p'r bale	315 00
say	$9,576 24
we hold their 3 notes, viz:	
1 due 8–11 Jan'y, '82	10,000 00
1 " 23–26 "	10,000 00
1 " 22–25 Feb'y, '82	5,000 00
	$25,000 00

78

1881.			CR.				
June	11.	By net pro. 1 b. c. p'r a. s. rendered		29 58	213	1	77
July	22.	" 2 " " "		69 90	172	3	35
	27.	" 1 " " "		29 05	167	1	35

1881.									
Oct.	7.	By cash from st'r Golden Crown for 1 bbl. mol's broken					19 12	95	50
	12.	By net pro.	1	*a.* c. per a. s.	rendered		50 34	90	1 25
	20.	"	1	"	"		46 06	82	1 05
	21.	"	1	"	"		40 49	81	90
	26.	"	1	"	"		62 63	76	1 32
	27.	"	2	"	"		97 22	75	2 02
Nov.	2.	"	6	"	"		278 72	69	5 35
	4.	"	27	"	"		1,315 83	67	24 48
	9.	"	8	"	"		390 30	62	6 71
	16.	"	17	"	"		749 28	55	11 44
	17.	"	11	"	"		542 59	54	8 15
	19.	"	43	"	"		2,045 74	52	29 55
	21.	"	1	"	"		40 45	50	55
Dec.	3.	"	2	"	"		89 67	38	95
		Forward					5,896 97	--	100 69

79

1881.									
Dec.	3.	By amounts brought forward					5,896 97	--	100 69
	29.	net pro. of your following 3 notes of 9th inst., our favor, discounted this date, viz:							
		1 at 30 dd., due 8–11 Jan'y, '82, for		$10,000 00					
		less disc't 14 dys., 8%		31 11					
						9,968 89			
		1 at 45 dd., due 23–26 Jan'y, '82, for		$10,000 00					
		less disc't 29 dys., 8%		64 44					
						9,935 56			
		1 at 75 dd., due 22–25 Feb'ry, '82, for		5,000 00					
		less disc't 59 dys., @ 8%		65 56					
						4,934 44			
							24,838 89	12	82 79
1882.									
Jan'y	10.	" net pro. 942 b. c. as per a. sales rendered					42,281 18		
	"	interest on red. to reduce acceptance of $6,500.15. interest, cash basis, this date					------	--	88 47
		balance of interest carried to debit in ac.					------	--	718 84
							75,017 04	--	990 79
1882.									
Jan'y	10.	By balance bro't down as cash this date					9,261 24		
		With 7 bales to be accounted for.							

—— Orleans, January 10th, 1882.

80 *Ex.* "*E*"—Cont'd.

Mess. L. C. Bryan & Bro., Columbia, Ark., in account current with J. L. Harris & Co. # 4.

Interest account, 10% per annum to 30th June, 1882.

1882.								
Jan'y	13.	To cash paid out in answering garnishment				5 25	168	23
Febr'y	25.	"	"	T. J. Semmes & Payne for professional services in suit of garnishment, Whittaker *vs.* J. L. Bryan & Bro.		20 00	125	69

1882.						
March 7.	"	invoice gnat oil per st'r J. W. Cannon		4 15	115	13
11.	"	do., St. Louis supplies p'r st'r Greenville, Jan. 21–4, '82	234 13			
"	"	do., St. Louis supplies p'r st'r Greenville, Jan. 21–4, '82	202 19			
				436 37	167	20 22
28.	"	cash p'd st'r C. of Vicksburg for insc. & can oil		1 00	94	03
April 22.	"	cash p'd J. E. Bryan, s. d. on R. M. Gaines for taxes		333 40	69	6 38
May 13.	"	cash p'd s. d. favor Bark of Greenville		125 00	48	1 67
June 30.		" balance of interest to credit in ac.			--	435 19
"	"	balance carried down		9,934 45		
				$10,859 57	--	464 54

1882.		Cr.				
Jan'y 10.	By	balance as per ac. rendered		$9,261 24	171	439 90
March 18.	"	net proceeds — b. c. per ac. rendered		399 31	104	11 53
20.	"	do. 5 p. do.		201 08	102	5 69
May 9.	"	do. 3 p. do.		142 75	52	2 05
15.	"	cash for Factors' & Traders' Ins. Co. in settlement of loss of invoice of supplies shipped from St. Louis per st'r Grand Tower		420 00	46	5 37
June 30.	By	balance of interest to date @ 10%, 8 c's		435 19		
				$10,859 57	--	464 54
1882.						
June 30.	By	balance brought down as cash this date		$9,934 45		

E. & O. E.
New Orleans, 30th June, 1882.

Against this credit of $9,934.45 we hold their 3 notes, viz:

1 due 8–11 Jan'y, '82	$10,000 00
1 " 23–26 " "	10,000 00
1 " 22–25 Feb'y, "	5,000 00
	$25,000 00
With accrued interest to date @ 8%	861 11
	$25,861 11

81

Exhibit "D."

List of Cotton Received from Point Chicot, Ark., for Account Mess. L. C. Bryan & Bro., Seasons 1881–1882.

Date received.	Conveyance.	Marks.	D.	C.
1881.				
Nov. 23	C. P. Chouteau	Pt. Chicot, R.	17	b. c.
"	"	do., F. M.	2	"
"	"	do., J. H. G.	13	"
"	"	do., E. G.	2	"
"	"	do., J.	2	"
"	"	do., C. F.	11	"
"	"	do., L. C. B.	1	"
"	"	do., J. H.	4	"
"	"	do., R. R.	7	"

Exhibit D.—Continued.

Date received.	Conveyance.	Marks.	D.	C.
1881.				
Nov. 23.	C. P. Chouteau	Pt. Chicot, F. F.	2	b. c.
"	"	do., A. H.	5	"
"	"	do., F.	1	"
"	"	do., R. J.	3	"
"	"	do., S. H.	11	"
"	"	do., R. H.	7	"
"	"	do., C. C.	5	"
"	"	do., M. T.	5	"
Dec. 8	C. P. Chouteau	do., H. J.	12	"
"	"	do., R.	7	"
"	"	do., S. C.	3	"
"	"	do., W. S.	5	"
"	"	do., J. W.	4	"
"	"	do., F. W.	2	"
"	"	do., C. W.	8	"
"	"	do., H. T.	15	"
"	"	do., J. A.	7	"
"	"	do., J. K.	7	"
"	"	do., E. P.	3	"
"	"	do., N. M.	3	"
"	"	do., P. W.	19	"
"	"	do., E. C.	9	"
"	"	do., H. J.	1	"
Dec. 15	Henry Frank	do., R.	1	"
	"	do., C. B.	4	"
	"	do., N. M.	3	"
	"	do., F. M.	4	"
		Forward	215	b. c.
82		Bro't forward	215	b. c.
1881.				
Dec. 15	Henry Frank	Pt. Chicot, R. C.	11	"
"	"	do., J. P.	14	"
"	"	do., H. T.	14	"
"	"	do., H. C.	11	"
"	"	do., J. H.	10	"
"	"	do., R. B.	9	"
"	"	do., A. H.	3	"
"	"	do., K. J.	1	"
"	"	do., E. C.	4	"
"	"	do., K. V.	15	"
"	"	do., A. B.	5	"
"	"	do., X. L.	3	"
"	"	do., J. H. G.	3	"
"	"	do., D. C.	4	"
"	"	do., L. G.	4	"
"	"	do., R. W.	10	"
"	"	do., A. L.	8	"
"	"	do., G. H.	1	"
"	"	do., M. L.	1	"
		do., J. G.	24	"
		do., B. R.	3	"
		do., G. P.	2	"
		do., J. L.	1	"
		do., A. B.	4	"
		do., W. G.	1	"
		do., S. G.	4	"

Exhibit D.—Continued.

Date received.	Conveyance.	Marks.	D. C.
		Pt. Chicot, R. F.	4 b. c.
		do., R. V.	2 "
		do., K. V.	2 "
		do., J. L.	14 "
		do., P. W.	1 "
		do., T. N.	11 "
		do., X. L.	1 "
		do., W. L.	2 "
		do., 20	1 "
29	Henry Frank	do., [20]	1 "
1882.			
Ap'l 27	Natchez	do., R. V.	1 "
		Total	425 b. c.

New Orleans, 30th June, 1882.

J. L. HARRIS & CO., *Sampolis.*

83 EXHIBIT "C."

Copy.

NEW ORLEANS, *December 27th*, 1881.

Mess. J. L. Harris & Co., New Orleans.

GENTLEMEN: We herewith hand you Mess. L. C. Bryan & Bro.'s draft, drawn in our favor on you at 60 days' date, for $6,500, and would ask that you accept same, charging the amount of the said draft to their ac. yet holding it in your possession until its maturity, on Feb. 25–28th, 1882. If at that time Mess. L. C. Bryan & Bro. have not in your hands sufficient funds or its equivalent in cotton to pay the said draft, after allowing for what they may then owe you, we obligate ourselves to take up the draft so accepted by you and provide for its payment. A compliance with this request, under the conditions named, will greatly oblige the house in St. Louis, as also the signers hereof, Mr. Luke Sells, who leaves your city this evening.

Yours, &c.,

(Signed) SELLS & CO.

84 P. S.—It is further agreed by us that, pending the maturity of the draft in question, Mess. L. C. Bryan & Bro. are competent to make drafts against shipments to you and to buy and sell cottons for future delivery, and any amounts so paid out by you for them are to have prior recognition over the acceptance given to us.

(Signed) SELLS & CO.

85 Ex. "B."

Mess. L. B. Bryan & Bro. in Account Current with J. L. Harris & Co. Cotton Purchase Ac.

Interest account, 10 % per annum.

1881.					
Dec. 29.	To amount loss on 300 b. c. March, p'r statem- 28 inst.	364 22	13	1	31
	Balance of interest at credit		--	31	70
	Balance carried down to credit	10,215 95			
		10,580 17		33	01
1881.	Cr.				
Dec. —.	By net proceeds your note of 9th inst. @ 60 dd., our favor, discounted this date, due 7–10 Feb'y, '82, for $10,000.00, less disc't, 44 d'ys, @ 8 % p. m., 97.78	9,902 22	12	33	01
1882.					
Jan'y 10.	" profits on 2,500 b. c., March & April, as per statement	646 25			
	balance of interest your favor	31 70			
		10,580 17	--	33	01
1882.					
Jan'y 10.	By balance brought down	$10,215 95			

E. & O. E.
New Orleans, January 10th, 1882.

Recapitulation.

Against this credit of $10,215.95 we hold their note, due 7–10 Febr'y, '82, for $10,000.00.

86 *Mess. L. C. Bryan & Bro. in Account Current with J. L. Harris & Co. Cotton-Purchase Ac.*

Interest ac., 10% per annum to 30th Jan'y, 1882.

1882.					
Jan'y 10.	By balance as per ac. rendered	$10,215 95	171	485	25
June 30.	interest to date	485 25			
1882.					
June 30.	By amount a credit this date	$10,701 20			

E. & O. E.
New Orleans, 30th June, 1882.

Recapitulation.

Against this credit ac. $10,701.20 we hold their note, due 7–10th Feb'y, '82, for	$10,000 00	
With accrued interest to date, @ 8 %	311 11	
		10,311 11

87 Ex. "A."

Mess. L. C. Bryan & Bro., Columbia, Ark., in Account Current with J. L. Harris & Co. *Ac. #4.*

Interest ac., 10% per annum to Dec. 9, '81.

1881.									
May	25.	To balance as per ac. rendered, due as cash				$1,416 09	198	77 88
	"	" acceptance, due 1-4 Nov., 1881		3,402 54				
	"	" " " " " "		1,459 88				
						4,862 42	35	47 27
	"	" cash p'd s. d. favor Geo. T. Wilkerson		13 75				
	"	" " " " J. Sayer		105 50				
						119 25	193	6 39
	31.	" " " " st'r Dean Adams				37	192	1 97
June	1.	" " " " J. M. White				40	191	2 12
	2.	" " " " J. Sayer				100	190	5 28
	4.	" " " Bark of Greenville				8 17	188	43
	"	" " " R. Buddecke				16 75	185	86
	8.	" " " st'r C. of Helena		84 17				
	"	" " " Halliday Bros.		380 90				
						465 07	184	23 77
	9.	" am't J. Sayer				56 25	183	2 86
	13.	" cash p'd do.				68 75	179	3 42
	16.	" " L. Jacquemine				50	176	2 44
	18.	" " J. Sayer				121 53	174	5 87
	20.	" " st'r Belle of Memphis				43 34	172	2 07
	22.	" " J. Sayer		28 47				
	"	" " Sells & Co.		1,232 98				
						1,261 45	170	59 57
	23.	" " st'r G'd Tower				35 84	169	1 68
	24.	" " J. Sayer				110 15	168	5 14
	27.	" " st'r City of Alton		72 25				
	"	" " Longstaff G. Proudfit		237 39				
						309 64	165	14 19
	29.	" " Rice, Stix & Co.				110 47	163	5
	30.	" " J. Sayer				10 77	162	48
July	2.	" " do.				29	160	1 29
	5.	" " 4 do.	40					
			45					
			56 14					
			24 09					
				145 23				
	"	" " S. Lehman & Son		110				
						255 23	157	11 13
	7.	" " R. Ruddick				16 75	155	72
	8.	" " Mrs. Annie G. Craig		100				
	"	" amount paid J. Sayer		50				
						150	154	6 42
	11.	" cash paid st'r City of Providence				21 85	151	92
	13.	" " R. Ruddick				21	149	87
	14.	" " J. Sayer				50 87	148	2 09
	16.	" 3 do.	49 13					
			41 80					
			50					
						140 93	146	5 72
	21.	" amount paid S. Friedman				50	141	1 96
	22.	" cash p'd J. Sayer				125	140	4 86
		Forward				$10,103 57	--	304 67

88

				Bro't forward				$10,103	57	--	304 67
1881.											
July	27.	To cash p'd s. d. fav. the City of Helena						47	10	135	1 77
August	1.	"	"	"	"	J. Sayer		100	00	130	3 61
	2.	"	"	"	"	Carlton & Bro.		46	05	129	1 65
	4.	"	"	"	"	J. Sayer		75		127	2 65
	11.	"	"	"	"	st'r St. John		31		120	1 03
	15.	"	"	"	"	J. Sayer	69 98				
		"	"	"	"	st'r Belle of Memphis	33 38				
								103	36	116	3 33
	18.	"	fire insurance on building at Luna for 1 year to 14th August, 1882, $2,000, @ 3½%					70		113	2 20
	22.	"	cash p'd 2 s. d. fav. J. Sayer				79 90 65 80				
								145	70	109	4 41
	24.	"	"	"	"	R. Ruddick	14 25				
		"	"	"	"	Rice, Stix & Co.	147 90				
								162	15	107	4 82
	25.	"	invoice sundries p'r st'r St. John				163 89				
		"	"	molasses & flour ac. Wm. Miller, per d.			30 44				
								194	33	106	5 72
	26.	"	cash p'd 2 s. d. fav. J. Sayer				100 92 50				
							192 50				
		"	"	"	"	L. Jacquemine	50				
								242	50	105	7 07
	29.	"	invoice meal & pork fr'm St. Louis, per st'r C. of Greenville, Aug. 27, '81					684	42	104	19 77
Sept.	1.	"	cash p'd s. d. fav. st'r Belle Memphis				36				
		"	"	"	"	Grand Tower	18				
								54		99	1 49
	7.	"	"	"	"	J. Sayer		54	15	93	1 40
	9.	"	"	"	"	st'r City of Greenville		52	50	91	1 33
	10.	"	"	"	"	R. Ruddick		15	75	90	39
	13.	"	"	"	"	B'k Greenville		500		87	12 08
	14.	"	"	"	"	J. Sayer		79	75	86	1 91
	15.	"	invoice tobacco & molasses p'r st'r Ed. Richardson					168	22	85	3 97
	17.	"	invoice meal & pork from St. Louis, p'r st'r G'd Tower, Sept. 15, '81					709	03	85	16 74
	19.	"	cash p'd s. d. favor L. H. Holland					31	44	81	71
	26.	"	invoice bagging & ties per st'r Ed. Richardson				170 45				
		"	"	invoice bagging & ties per st'r Ed. Richardson			318 40				
			"	invoice bagging & ties per st'r Ed. Richardson			318 40				
								807	25	74	16 59
	27.	"	cash p'd s. d. fav. J. Sayer				200				
		"	"	"	"	A. M. Paxton & Co.	63 75				
		"	"	"	"	B'k of Greenville	500				
								763	75	73	15 49
	28.	"	"	"	"	st'r Grand Tower		56	87	72	1 14
	29.	"	"	"	"	M. E. Mayer	86 52				
		"	invoice sundries per st'r C. P. Chouteau				119 45				
								205	97	71	4 06
Oct.	4.	"	cash p'd s. d. fav. B'k of Greenville				500				
		"	"	"	st'r Ed. Richardson up. f't bagg.		24 50				
								524	50	66	9 62
	7.	"	cash p'd s. d. st'r Ed. Richardson, sundries					5		63	09

1881.								
Oct.	11.	To invoice supplies fr'm St. Louis, p'r st'r C. of Greenville, Oct. 8, '81			743	89	62	12 81
	"	" cash p'd s. d. fav. Bark of Greenville	$500					
	"	" " " " S. Friedman	25					
					525		59	8 60
		Forward			$17,302	16	--	471 12
89								
		Bro't forward			$17,302	16	--	471 12
1881.								
Oct.	13.	To cash p'd st'r Ed. Richardson up. f't on sundries			7	25	57	11
	14.	" " s. d. favor Ivy & Mahood			214	27	56	3 33
	18.	" " " " Bark of Greenville			500		52	7 22
	20.	" " " st'r City of Greenville			55	70	50	77
	24.	" " " E. C. Markham & Co.			54		46	69
	25.	" " " Bark of Greenville			500		45	6 25
	26.	" invoice tobacco p'r st'r C. P. Chouteau			60	88	44	74
Nov.	1.	" " supplies from St. Louis per st'r City of Vicksburg Oct. 29, '81			632	80	41	7 21
	"	" cash p'd s. d. fav. Bark of Greenville			500		38	5 28
	3.	" " " " " L. Jacquemine			161	10	36	1 61
	14.	" " " 2 " ----do --	87 25					
			41					
				128 25				
	"	" " " " " City of Vicksburg		52 50				
	"	" " " " " M. E. Mayer		334 40				
					515	15	25	3 58
	17.	" amount L. Jacquemine		34				
	"	" invoice bagging & ties per st'r H'y Frank		152 75				
	"	" invoice bagging & ties per st'r H'y Frank		221 56				
					408	31	22	2 50
	21.	" cash p'd s. d. fav. W. H. Williams			150		18	75
	23.	" " " " " st'r C. P. Chouteau			300		16	1 33
	28.	" " 2 " " J. Sayer	200					
			193 24					
					393	24	11	1 20
	"	" am't your note — favor, due 1-4 Nov., '81			539	37	35	5 24
	"	" " " " 15-18 Nov., '81			5,255	80	21	30 66
	29.	" " " " 25-28 " "			5,268	09	11	16 10
Dec.	5.	" cash p'd s. d. fav. L. Jacquemine		170				
	"	" " " " J. Sayer		198 70				
					368	70	4	41
	8.	" " " " " st'r C. P. Chouteau		500				
	"	" " " " " J. Sayer		93 70				
					593	70	1	16
	9.	" " " " do.		157 60				
	"	" " " " note Thos. Simms & Levy		635 99				
	"	" " " " interest on same		21 34				
					814	93		
		Forward			$34,595	45	--	566 26
90		Dr.						
		Bro't forward			$34,595	45	--	566 26
1881.								
Dec.	9.	To balance of interest on ac. to date @ 10% p. p.			517	97		
					$35,113	42	--	566 26

Cr.

1881.							
June	11.	By net pro. 1 b. c. per ac. rendered	$29 58	181	1	49
July	22.	" " 2 " " "	69 90	140	2	72
	27.	" " 1 " " "	29 05	135	1	09
Oct.	7.	" cash from st'r Golden Crown for 1 bbl. mol's broken	19 12	63		33
	12.	" net pro. 1 b. c. per ac. rendered	50 34	58		81
	20.	" " 1 " " "	46 06	50		64
	21.	" " 1 " " "	40 49	49		55
	26.	" " 1 " " "	62 63	44		77
	27.	" " 2 " " "	97 22	43	1	16
Nov.	2.	" " 6 " " "	278 72	37	2	86
	4.	" " 27 " " "	1,315 83	35	12	79
	9.	" " 8 " " "	390 30	30	3	25
	16.	" " 17 " " "	749 28	23	4	79
	17.	" " 11 " " "	542 59	22	3	32
	19.	" " 43 " " "	2,045 74	20	11	37
	21.	" " 1 " " "	40 45	18		20
Dec.	3.	" " 2 " " "	89 67	6		15
	9.	" balance of interest to y'r debit in ac.		--	507	97
		" balance carried down to debit	29,216 45			
			$35,113 42	--	566	26

1881.
Dec. 9. To balance bro't down at y'r debit as cash this date $29,216 45

With 518 b. c. to be accounted for.

E. & O. E.
New Orleans, 9th December, 1881.

Memorandum.

Your note our favor, due 10-13 Dec., '81	$5,286 65
" " " " 20-23 " "	5,299 10
" " " " 26-29 " "	5,306 60
Together	$15,892 35

91 *Recapitulation of L. C. Bryan & Bro.'s Indebtedness to J. L. Harris & Co.*

December 9th, 1881.

Balance due in open ac., per statement hereunto attached	$29,216 45	
Due by notes, as per statement	15,892 35	
Total indebtedness		$45,108 80
Less 518 b. c. in hand, of an estimated value of $45.00 per bale		23,310
Net estimated debit December 9th, 1881		$21,798 80

Filed October 20, 1882.

RALPH L. GOODRICH, *Clerk.*

92 United States of America,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 23 day of October, anno Domini one thousand eight hundred and 82, at the United States court-room, in the

city of Little Rock, Arkansas—the Honorable Henry C. Caldwell, district judge, presiding and holding said court—the following proceedings were had, to wit, on November 24, 1882, as follows:

JOHN P. WALWORTH *et al. v.* J. L. HARRIS & Co. *et al.*

Come the complainants, by D. H. Reynolds and U. M. & G. B. Rose, Esq's, their solicitors, and file herein their replication, and, on motion of said solicitors, it is ordered that this cause be set down for final hearing on February 24, 1883.

Which replication is as follows:

93 In the United States Circuit Court for the Eastern District of Arkansas. In Chancery.

JOHN P. WALWORTH *et al.*, Plaintiffs,
v.
J. L. HARRIS *et al.*, Defendants.

Come said plaintiffs, — for replication to the answer of said several defendants on file herein they say that they will maintain and prove that their said bill herein is true in fact and sufficient in law and that said answers are untrue in fact and insufficient in law at such time and manner as the court may direct.

D. H. REYNOLDS.
U. M. & G. B. ROSE.

Filed Nov. 24, 1882.

RALPH L. GOODRICH, *Clerk.*

94 And on December 15, 1882, as follows:

JOHN P. WALWORTH *et al. v.* JOSEPH L. HARRIS *et al.*

Come the plaintiffs, by U. M. & G. B. Rose, Esq's, their solicitors, and file herein their replication and petition of G. F. Stripling.

Which replication is as follows:

In the United States Circuit Court for the Eastern District of Arkansas.

JOHN P. WALWORTH *et al.*, Plaintiffs,
v.
JOSEPH L. HARRIS *et al.*, Defendants.

Come the said plaintiffs, and for replication herein say that they will maintain their bill herein is true and sufficient in law and that the answers of the said defendants filed herein are insufficient in law and untrue in fact at such time and place as the court may direct.

D. H. REYNOLDS.
U. M. & G. B. ROSE.

Filed Dec. 15, 1882.

RALPH L. GOODRICH, *Clerk.*

95 Which petition is as follows:

Petition of G. T. Stripling.

United States Circuit Court, Eastern District of Arkansas.

JOHN P. WALWORTH *et al. v.* JOSEPH L. HARRIS *et al.*

To the honorable judges of the circuit court of the United States for the eastern district of Arkansas, in chancery sitting:

Your petitioner states that on the 2nd day of December, 1881, the firm of L. C. Bryan & Bro., of which firm the surviving partner is one of the defendants in this case, was justly indebted to him in the sum of fifteen hundred dollars; that for the purpose of paying said sum the said firm on that day drew on the said defendants, Joseph L. Harris & Co., a draft, of which the following is a copy:

$1,500.00. COLUMBIA, ARK., *Dec. 2nd*, 1881.

At thirty days' sight pay to the order of G. T. Stripling
96 fifteen hundred dollars, $1,500.00, value received, and charge the same to account of—

L. C. BRYAN & BRO.

To J. L. Harris & Co., New Orleans, La.

That said defendants, J. L. Harris & Co., promised that they would pay said draft, and, on the faith of that promise, the said L. C. Bryan & Bro. shipped the said J. L. Harris & Co. a large amount of cotton, more than sufficient to cover the amount of said bill. The said J. L. Harris & Co. received said cotton, but have refused and still refuse to honor said draft.

That said draft remains due and unpaid.

Filed December 15, 1882.

RALP. L. GOODRICH, *Clerk.*

97 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 22 day of October, anno Domini one thousand eight hundred and 83, at the United States court-room, in the city of Little Rock, Arkansas—the Honorable Henry C. Caldwell, district judge, presiding and holding said court—the following proceedings were had, to wit, on December 22, 1883, as follows:

JOHN P. WALWORTH *et al. v.* JOSEPH L. HARRIS *et al.*

Came on this day said plaintiffs, by D. H. Reynolds and U. M. & G. B. Rose, Esq's, their solicitors, and also came said defendants, by F. W. Compton and J. F. Robinson, Esq's, their solicitors, and now it is agreed by counsel that this cause shall be set for final
98 hearing on the first Wednesday in February, 1884, and that plaintiffs may take depositions until the 15th January next,

and that said defendants have leave to take depositions until the first day of February next.

(Signed) REYNOLDS,
U. M. & G. B. ROSE,
For Complainants.
F. W. COMPTON,
J. F. ROBINSON,
For Defendants.

The following depositions were read on the final hearing of this cause:

99 *Deposition of J. E. Bryan.*

JOSEPH E. BRYAN, a man of lawful age, first being duly sworn, deposes as follows:

1st. Question first. What is your name, age, and place of residence?

Answer. My name is Joel E. Bryan; my age is 29 years; my place of residence, Columbia, Chicot county, Arkansas.

2nd. Question 2nd. State what business you were engaged in during the years 1880, 1881, and 1882, and at what point and with whom were you associated in business.

Answer. In general mercantile business and planting with L. C Bryan, my brother, under the firm name of L. C. Bryan & Brother

3rd Question. Mr. Bryan, when was that firm dissolved?

100 Answer. On January 16th, 1882, by the death of my brother.

4th Question. Who were your commission merchants or factors for the firm during its continuance?

Answer. J. L. Harris & Co., New Orleans.

5th Question. What was the condition of your accounts with J. L. Harris & Co. on December 9th, 1881?

Answer. I do not know the exact state of our accounts with J. L. Harris & Co. on the date named; I know that we were considerably behind with them. I know that on that day we executed to them promissory notes aggregating thirty-five thousand dollars.

Question. Don't you know whether the notes given embraced any other consideration than the indebtedness of L. C. Bryan & Bro. to J. L. Harris & Co.?

Answer. I know that one of these notes was given to raise
101 money for speculation in cotton futures. The others were given to cover indebtedness and for advances in our business

Question. How much cotton did the firm of L. C. Bryan & Bro. ship to J. H. Harris & Co. of the crops of 1881 prior to the death of L. C. Bryan?

Answer. One thousand and sixty-five *ties.*

Question. Who cultivated Point Chicot plantation in the years 1879, 1880, and 1881?

Answer. L. C. Bryan.

Question. By what authority?

Answer. Under lease from Jno. S. Whitaker, executor, &c.

Question. Was there any agreement between yourself and Mr. Churchill, as agent for J. L. Harris & Co., at any time in reference to the payment of the rent of Point Chicot plantation for the year 1881?

102 Answer. There was none.

Question. Was there any agreement between yourself and J. L. Harris & Co. about the payment of such rent?

Answer. There was none with me, only what my brother told me.

Question. What did your brother tell you?

(Objected to by defendants' counsel.)

Answer. Churchill took me out and talked with me and asked me if there was any objection to my signing the deed of trust. I told him I had none, provided they complied with what they had agreed to. Before Churchill left he handed L. C. Bryan a confidential letter, which caused Mr. Bryan to go to New Orleans. Before Mr. Bryan left I told him I would not sign the deed until I heard from him. I went with Mr. Bryan to the boat, and he told me if he arranged matters satisfactorily in New Orleans he would
103 let me know. I then stated to him I would not sign the deed until I heard from him. The evening before I signed the deed of trust I got a letter from Mr. Bryan, dated December 24th, requesting me to sign the deed of trust; that J. L. Harris & Co. had agreed to pay the rent on Point Chicot plantation.

(Answer excepted to by def'ts' counsel.)

Question. How and by whom was the rent paid on Point Chicot plantation for the years 1879 and 1880?

Answer. J. L. Harris & Co. for L. C. Bryan & Bro.

Question. How much of the thousand and sixty-five bales cotton was sold prior to the execution of the deed of trust?

Answer. About one hundred and twenty-three bales.

104 *Deposition of Joel E. Bryan.*

There was not any cotton shipped from Point Chicot in 1881 of the crop — 1881 except what was raised on the place—that is, don't think there was.

I think there were 59 or 60 bales shipped on December 27th; I think there were 45 shipped from Leland and 15 bales from Luna. I have examined recently the books and ascertained definitely with regard to the shipment.

Don't know what time the boat arrived at Luna, but it must have been on the night preceding or early on the morning of the 27th, as she left Leland in the afternoon some time—I think it was after 12 o'clock—on December 27, 1881.

I don't know the date of the bill of lading from Luna. I have not examined it lately.

105 I think it would take a boat two or three days to reach New Orleans after leaving Luna.

I think I advised J. L. Harris & Co. of the shipment of 59 bales of cotton by the Henry Frank on the 27th day of December, 1881. I don't remember whether this letter was sent by mail or on the Frank.

This 59 bales is a part of the 60 bales before mentioned. The way the discrepancy occurs is that I bought one bale from Joe White after the letter was written advising them of the shipment of the 59 bales, and it was included in the shipment, making it 60 bales.

I recognize the letter marked Exhibit "O" as being a letter received by my firm of the receipt of the 60 bales cotton, and identify the same by my signature.

106 The custom of the house of J. L. Harris & Co. with our firm was to acknowledge receipt of cotton shipped to them at the time the boat came in port or immediately thereafter.

It was the custom of the house of J. L. Harris & Co. to notify my firm of the sale of cotton as soon as the sale was made.

The first and only notice I knew of sale of the 942 bales of cotton was by a letter from J. L. Harris & Co. to my firm, dated January 9th, 1882.

I recognize Exhibit "P" as being a copy of the letter received from the house of J. L. Harris & Co. to my firm advising us of the sales of 942 bales cotton and identifying the same by my signature.

I don't remember the time I received this letter, but I think it was just before or just after the death of L. C. Bryan, which was on the 16th day of January, 1882.

107 The 59 or 60 bales shipped on the Henry Frank on the 27th December, 1881, were embraced in the reported sale of the 942 bales.

I recognize the letters marked O 1 & 2 as being the letters covering the account sales of the 942 bales and identify the same by my signature.

Exhibit R is a true copy of the account sales of the 60 bales mentioned as having been shipped on the 27th day of December, 1881, as furnished by J. L. Harris & Co. to my firm, which is a part of the account sales of the 942 bales.

My name is Z. T. Carleton; I reside at Luna Landing, Chicot county, Arkansas; age, 33 years. I am the trustee in the deed of trust mentioned in the pleadings in this case and one of the defendants in this suit.

108 As trustee I sold the real estate mentioned in the deed of trust and had the same appraised, before sale, under the appraisement law.

Pastoria was appraised at $3,500.00 and sold for $3,100.00.

The Miller place was appraised at $2,000.00 and sold for $1,500.00.

The Saunders tract was appraised at $400.00 and sold for $300.00.

I sold the above lands at public auction and advertised the sale as provided in the deed of trust. J. L. Harris & Co. were the purchasers of the three tracts of land above mentioned at the prices above named.

J. E. Bryan, as surviving partner of L. C. Bryan & Bro., delivered to me a lot of mules and horses, which I sold at public auction for $2,244.00; this was the first lot.

109 The land was sold on the 28th day of April, 1882. The mules and horses were sold on the — day ——, 188–.

I sold a lot of notes and accounts secured by mortgages on stock the same day that I sold the mules and horses. These notes and accounts realized the sum of $935.00.

The mules and horses and notes and accounts were bought by different parties.

All the property brought a fair price. I thought so and everybody present thought so.

110 EXHIBIT "O." J. E. Bryan.

NEW ORLEANS, *December 30th*, 1881.

Mess. L. C. Bryan & Bro., Luna, Ark.

GENTLEMEN: Yours of 27th to hand; noted. The cotton advised is received, per steamer Henry Frank, only that we get 60 b. c. instead of 59, as you name.

Respectfully, J. L. HARRIS & CO.
CARPENTER.

EXHIBIT P. J. E. Bryan.

NEW ORLEANS, *Jan.* 9, 1882.

Mess. L. C. Bryan & Bro., Luna, Ark.

DEAR SIRS: We are pleased to report completions of delivery of your 942 b. c. sold, on the 28th ult., when your Mr. Bryan was here, to Mess. G. H. Green & Co., the balance, 518 bales, having

111 been weighed to-day. We will forward ac. sales as soon as practicably. We report a firm market, with prices ⅛ higher.

Yours truly,
(Signed) J. L. HARRIS & CO.

EXHIBIT O 1. J. E. Bryan.

Copy of Letter.

NEW ORLEANS, *Jan.* 10, 1882.

Mess. L. C. Bryan & Bro., Columbia, Ark.:

Herewith please find accounts of sale of 940 bales cotton. Net proceeds at your credit in account, $42,241.65.

Respectfully, J. L. HARRIS & CO.

NEW ORLEANS, *Jan.* 10, 1882.

Mess. L. C. Bryan & Bro., Columbia, Ark.:

Herewith please find accounts of sale of 2 bales cotton. Net

112 proceeds at your credit in account, $39.53.

Respectfully, J. L. HARRIS & CO.

EXHIBIT R. J. E. Bryan.

Sale No. 450.

Sale of J. L. Harris & Co. of 60 bales cotton received, per H'y Frank, Dec. 28, '81, account of Mess. L. C. Bryan & Bro.

DEC. 28, '81.

Sold to G. H. Green & Co.—

Pt. Chicot,	1	b. c., w'h'g	404	lb	
Leland,	45	"	20,254		
L. C. B.,	3	"	1,658		
P. J. S.,	5	"	2,399		
G. K.,	6	"	2,605		
	60		27,320	lb, @ 11¼	$3,073 50

Charges:

Freight, as per bill lading	@	$60	
Charges, as per bill lading	"	3 90	
River or R. R. ins. on $55 p'r bale	" ½%	16 50	
Fire ins. on gross am't of sale	" ¼%	7 68	
Drayage, storage, labor, w'h'g, 2 months,	" 75	45	
Storage on excess of 2 months	"		
Commissions on gross am't of sale	" 2½%	76 84	
			209 92
Net proceeds			$2,863 58

E. E.
New Orleans, Jan'y 10, '82.

J. L. HARRIS & CO.,
Per DUPLANTIER.
J. M. PARKER.

113

EXHIBIT U. J. E. Bryan.

Office of J. L. Harris & Co., cotton factors and general com. merchants, No. 38 Perdido street.

NEW ORLEANS, *Jan'y 14th*, 1882.

Mess. L. C. Bryan & Co., Luna, Ark.

GENTLEMEN: We are duly in receipt of your several letters (two each of 9th & 11th), and also your telegram of even date, the latter from Greenville, at which point we wired you in answer telling you to await Mr. Parker's arrival on the White H. H.

On learning of the sinking of the Grand Tower, we wired Sells & Co. to duplicate the shipments to you, and this they advise us, under date of the 12th, they would do so.

Regarding the "small breaks" in the Pastoria levee it were

doubtless well to have them taken in time, if there is any promise of danger therefrom, though as Mr. Parker is now on the
114 ground we leave to him the "say so" as to what shall be done. We are at a perfect loss to understand your reference to the contract we bought for you. We had only 2,500 bales. These we closed out as we advised you, and even if we had not closed out and prices did promise an advance, we certainly could not consent to take up your outstanding paper simply because of an anticipated profit.

Now to your letter of the 9th, which has had a very careful reading, we are not disposed to accept the arrangement therein proposed, but rather suggest that your statement of affairs now leaves open but one mode of procedure, and that is that you assign over and transfer to us the Point Chicot lease, and then we will foreclose our deed of trust, buy in all under the foreclosure sale, and put you in charge to manage in our interest.

115 Including the "Sells" paper, you now owe us $15,000.00, and have neither spot nor contract cotton to go against same, and under this condition of affairs foreclosure as above is the only solution. You certainly will appreciate and understand our position and will do what you can to facilitate matters by pointing out to the trustee any and all property, &c., covered by the deed, and turn over to us any other securities, such as notes, bonds, accounts, &c., that you may have.

Yours, &c., J. L. HARRIS & CO.

116 JOHN S. WHITAKER, of said city of New Orleans, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the action aforesaid, did then
117 and there on his oath aforesaid depose and say as follows, viz., in behalf of plaintiffs:

My name is John S. Whitaker; I reside in New Orleans, Louisiana, and am by profession an attorney-at-law. I am executor of the estate of the late Horace F. Walworth, late of Louisiana, deceased, and am plaintiff in this suit. I know the defendants. In the latter part of 1878 I made a contract of lease with L. C. Bryan, of Chicot county, Arkansas, for the Point Chicot plantation, belonging to the successors on estate of Horace F. Walworth, for five years from January 1, 1879. This lease was made under private signature and but the one instrument signed, which is on file in the suit herein, or a lease was given to my attorneys herein for that purpose. However, there may have — a duplicate of the lease signed at the time.

The lease was granted or made for the annual rental of fifty-
118 five hundred dollars and other consideration therein set forth *in* December 29, 1879. L. C. Bryan, the lessee, wrote me from Columbia, Arkansas, the letter that I hereto attach as Exhibit W and make *make* part of my deposition, wherein he directed me to call on J. L. Harris & Co., of this city, for the sum of fifty-five

hundred dollars, and he inadvertently therein spoke of paying his note in my favor, while in truth and in fact I had no note, and the payment he therein directs collection of was for the rental of 1879 of the Point Chicot plantation. On January 2, 1880, I called on J. L. Harris & Co, at their office, in this city, and they paid me for account of L. C. Bryan twenty-seven hundred and twenty-six .90 dollars, and subsequently, on January 9, 1880, said firm paid me the balance of the fifty-five hundred dollars, which was in full for the rental of the year 1879.

119 The rental of said plantation for the year 1880 was paid by J. L. Harris & Co. in instalments from time to time as demanded, and Exhibit S, which I hereto attach and make part of my deposition herein, is the account current had and received by me from said J. L. Harris & Co. of and for said rental of 1880.

During the pendency of this lease J. L. Harris & Co. loaned me on pledge thereof twelve hundred and twenty-six .91 dollars, for which they took my note, and endorsed on the lease same evidence or note of this fact and retained in their possession the lease itself until I had redeemed it from its pledge and repaid them the loan.

When I negotiated this loan the matter of the lease was discussed, its duration and amount, and it was stipulated by J. L. Harris that I should leave the lease in their possession as collateral for the loan to be made, and I myself handed it to him.

120 In January, 1882, I called on J. L. Harris & Co. for the rental of 1881. Bryan, the lessee, was in New Orleans at the time and directed me to do so. I demanded payment of the rent and this Harris declined to pay it, alledging want of funds therefor, though Bryan had — informed that they had received his cotton for sale, and therefrom I was to be paid the rental for the year eighteen hundred and eighty-one.

A few days prior to this Mr. Bryan had called at my office and notified me that the rental would be ready for me, at the office of J. L. Harris & Co., on January 1, 1882, or thereabouts, and requested me to call and get it; hence I *I* made the above demand on J. L. Harris & Co.

J. S. WHITAKER.

Sworn to and subscribed by said J. S. Whitaker on the day and year, between the hours, and at the place first aforesaid.

ANDREW HERO,
Notary Public.

121 T. J. Semmes, of counsel for J. L. Harris & Co., waived cross-examination of said witness, J. S. Whitaker, and entered objections to all that portion of said witness' (Whitaker) testimony in which he states conversations between himself and L. C. Bryan or what Bryan said to him, on the grounds that same is hearsay and not testimony.

And on said fifteenth day of June, A. D. 1883, between the hours and at the place named in the caption hereof, JOSEPH L. HARRIS, a

witness known to me to be of lawful age, being to me produced and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the actions aforesaid, did then and there on his oath aforesaid depose as follows, viz., on behalf of defendants:

I am a member of the firm of J. L. Harris & Co., of the city
122 of New Orleans, Louisiana, and said firm is composed of John M. Parker and myself. In the latter part of October of the year eighteen hundred and eighty-one L. C. Bryan, of the firm of L. C. Bryan & Bro., came to New Orleans in person to arrange with my firm for advances necessary to enable his firm to obtain money to pay for picking and ginning cotton; to pay balances on cotton taken in the usual course of trade, and to buy cotton and ship it to my firm. He also desired to arrange for the purchase in New Orleans by my firm for account of his firm of cotton for delivery in the months of March & April of 1882.

I told him I was opposed, as also was my firm, to speculations in futures, and that his firm already owed us a very large amount, and that if we were to furnish his firm the advances requested and make the purchases of cotton for future delivery, as he desired, they must give us a deed of trust to cover all their property, real
123 and personal, to secure the then existing indebtedness of his firm to us, and any future indebtedness which might result from advances then proposed to be made for the purposes mentioned above.

The deed of trust and all the notes described in it were intended to secure the indebtedness of L. C. Bryan & Bro. existing *on* October, 1881, and any advances subsequently made by us to that firm to enable them to obtain cotton in course of trade, to pick and give cotton or buy it as above mentioned, and to purchase futures as above stated, although it was understood that L. C. Bryan & Bro. were allowed to speculate in futures to an extent the probable losses on which would not exceed ten thousand dollars.

The proceeds of one note of ten thousand dollars were carried by my firm to a separate account in order to keep the run of the operations on futures.

124 Such account was, however, not opened at the suggestion of L. C. Bryan & Bro. nor by arrangement with them, but for our own convenience.

L. C. Bryan at that interview agreed for his firm that the deed of trust would be executed for the purposes above mentioned and left here with the object of completing and consummating the arrangement as made.

At the same time he requested that pending the execution of the deed of trust my firm would make some purchases of cotton for future delivery for account of his firm, and these purchases were made, it being understood that my firm should have the right to close out any or all cotton so bought at our discretion.

Early in November of 1881, in pursuance of the agreement had with L. C. Bryan, his firm commenced drawing drafts on my firm

for the purposes previously named, and my firm honored their drafts.

125 I hereto annex and make part of my deposition herein as Exhibits H[1], H[2], & H[3], their letters to my firm of date of November 7 and November 27, 1881, as also a copy of a letter of my firm of date of November 21, 1881, written and sent them, which is marked Exhibit H[3].

Later on, in the same month, L. C. Bryan & Bro. commenced calling on my firm in excess of the amounts agreed upon and in favor of parties and for purposes other than was the understanding between us, and my firm at once called their attention to their deviations from the understanding and protesting against the same.

I hereto attach and make part of my deposition herein, as Exhibit 4, a copy of my firm's letter of December 1st, 1881, so written and sent to them, which letter of December 1, 1881, was so written and sent to them in answer to a letter of L. C. Bryan & Bro., of November 26, 1881, which has been lost or mislaid and cannot be

126 found. In the early part of December, 1881, L. C. Bryan came to New Orleans, with his wife, for the purpose of completing the deed of trust previously promised, and then he asked me to buy for his firm four thousand bales cotton for future delivery. He further requested me to pay some recent drafts drawn by his firm for the purpose of controlling cotton and named some others that would be drawn for the same purpose, and assured me that said drafts were not given, and that none would be given for any other consideration. I call to mind as among the parties named by him in connection with these drafts the following, viz: Bark of Greenville, steamer Chouteau, J. Sayer, Jacquemine, and also Thos. Semmes & Levy, the latter firm of this city, to whom they owed a note for about six hundred dollars. I agreed that my firm would pay the demands I have specified and named.

He then referred to some old balances which his firm owed,

127 and to drafts previously drawn by his firm and were not honored by us. Special reference was made by him to the claims of Bishop Bros., of Cincinnati; B. Lowenstein & Bro., of Memphis, and some furniture company at Evansville, Indiana. He asked me to pay those parties, claiming that they had been indulgent with him and his firm, and that he had promised them that they should be paid.

I positively declined to do so, telling him that he was virtually insolvent, unless his ventures in futures turned out profitably, and of that there was no certainty. He then asked us to write to the parties above referred to, explaining matters, and to say to them that we would pay their claims when in our judgment the account of L. C. Bryan & Bro. with us would warrant or justify us in so doing.

This I promised to do, but did not, for the reason that in a few days afterwards I was informed that L. C. Bryan had been in-

128 dulging in the greatest excesses, drinking and gambling to an alarming extent, and I so wrote him.

My firm, however, paid all that it agreed to pay. We did not pay

the furniture company nor Lowenstein, but we did pay Bishop Bros. one thousand dollars and a small amount of accrued interest, for the reason that we afterwards discovered that long before, on April 25, 1881, we had committed ourselves to pay that amount.

I hereto attach as Exhibits H^5 and H^6, and make same part of my deposition, copies of two letters, and also extracts of another on this subject.

There was no agreement or promise made by me or my firm before or at the time the deed of trust was given, or at any other time, with L. C. Bryan or his firm to pay any of the parties named in the bill filed in this suit.

On the contrary, L. C. Bryan told me that he was unable to pay them, and it was for that reason he desired to speculate in
129 cotton, hoping thereby to make money enough to do so.

Neither myself nor my firm knew of B. Lowenstein having a deed of trust or any other claims on cotton shipped by L. C. Bryan & Bro. to us until after the death of L. C. Bryan. On December 9th, 1881, L. C. Bryan gave my firm the deed of trust, as agreed upon, which was prepared by Andrew Hero, Jr., notary public, in New Orleans, and executed at his office. Myself and L. C. Bryan were both then and there present, acting for and representing our respective firms, and his wife, Mrs. Sarah E. Bryan, was also present at the execution of said deed of trust and a party to it.

The notes as described in said deed and secured thereby were drawn up by the notary aforesaid, the amount of each having been furnished him through the book-keeper of my firm, Charles L. Revet, with the approval of L. C. Bryan.

Judge Whitaker never to my knowledge had any lease of
130 the Point Chicot plantation to L. C. Bryan & Bro.

He did have it leased for the seasons of 1879 & 1880, but it was to or with L. C. Bryan individually, and my firm at one time had that lease in his possession as collateral security for money loaned to him.

I did not know nor do I know now that he had or held such a lease in 1881.

I am informed that the rental to Judge Whitaker for the lease of the Point Chicot plantation did not mature until January 1, 1882, and at that date all of the cotton from that plantation except one bale had been shipped to and received by my firm for account of L. C. Bryan & Bro., and had been sold.

My firm received no cotton from that plantation after the alledged date of maturity of said rental except one bale.

I never read nor examined the terms or conditions of the lease which Judge Whitaker placed with my firm. He proposed
131 reading it to me, but I waived that formality, and was content to accept his assurance that all was correct and in order, I fully believing him to be capable and honorable.

I deny that the firm of L. C. Bryan & Bro., from whom and for whose account the cotton was received from Point Chicot plantation, was received by my firm — owed or owe any money for the rent of that plantation. They never were the lessees of that plantation, and

I am advised that if there was any lease to or from either party it is and was not of record.

The letter of my firm, of December 16, 1881, to L. C. Bryan & Bro., whereof a copy is hereto attached and made a part of my deposition herein as Exhibit H[7], was merely an introduction to them of Mr. Sam. Churchill, who at that time was in the employment of my firm.

Said letter was not given nor intended to be given as authority to Churchill to change or nullify previous arrangements made
132 by me with L. C. Bryan & Bro. in regard to the deed of trust or to empower him to make any new terms or conditions as to the deed of trust or notes secured by it. The deed of trust had then been already signed by L. C. Bryan and his wife, and Churchill's mission was to see that J. E. Bryan signed it and to endeavor to hasten its recording and to urge L. C. Bryan & Bro. to send forward their shipments of cotton.

At that time I did not know, nor, indeed, did I until after the deed of trust had been recorded become aware that J. E. Bryan had ever refused to sign the deed of trust.

When L. C. Bryan was here, in the latter part of December, 1881, he asked me to pay the rental of his lease, or at any rate a portion of it, as then he would be enabled to retain the Point Chicot plantation another year, and it was suggested that his firm should lease the plantation, in which event we would advance twenty-five
133 hundred dollars to make a partial payment to the lessor in advance, but the idea was abandoned.

L. C. Bryan, returning home, again asked by telegrams that we pay Judge Whittaker one-half of the amount due on his lease, and we again refused. I hereto attach as Exhibits H[8] and H[9] and make same part of my deposition herein copies of the telegrams received and sent in the premises.

I also attach as Exhibit H[10] and make same part of my deposition herein copy of my firm's letter to B. Lowenstein & Bro. declining to pay their claim.

I also attach as Exhibits H[11] and H[12] and make same part of my deposition herein the written agreements or understandings that Mess. L. C. Bryan & Bro. signed concerning their future cotton purchases, and in reference to the deed of trust and notes that were given by them to my firm as I have hereinbefore testified.

134 Cross-examination by J. S. WHITTAKER, one of the plaintiffs:

Said J. S. Whittaker, executor, &c., objects to the statements made by L. C. Bryan out of the presence of plaintiffs on the grounds that same is hearsay, and also objects to conversations leading to statements made by said Bryan.

A deed of trust was executed by L. C. Bryan on December 9, 1881, but the agreements concerning it were entered prior to that date.

Same were made or entered into at New Orleans. The considerations are stated in my examination-in-chief and is expressed in the

deed of trust. I cannot remember the number of notes, but the deed of trust will specify

These notes were signed by the firm of L. C. Bryan & Bro.

Question. Did Mr. Bryan at the time of the execution of the deed of trust give you a statement of the obligations for which he wished the deed of trust made; and, if so, where is that statement?

135 Answer. He gave no written memoranda or statement that I remember.

Question. For what amount, then, would you be able to have required the notes to have been made if no statement was made?

Answer. We made a statement or memoranda, probably in pencil, showing Mrs. Bryan about what it would require.

Question. Was or was not the rent of Point Chicot plantation—fifty-five hundred dollars—placed at the head of the list of indebtedness?

Answer. No, sir; it was not; nor at any part of the list.

Question. Will you state some of the objects for which this deed of trust was made?

Answer. I have stated in my main examination it was money to pick and gin cotton and otherwise prepare same for market; to pay balances on cotton that they might buy or purchase in trade; to pay for cotton that he might purchase in full, and to pay

136 the debts that I have mentioned, and to furnish or provide money to be used as margins in his purchase of futures.

Question. What plantations was Mr. Bryan carrying on in Arkansas in 1881?

Answer. He was cultivating three or more plantations, and was controlling cotton from others; Pastoria, Point Chicot, and the Island or Miller place, I believe, were their names.

Question. What number of bales of cotton were shipped to your firm by him from Point Chicot place in 1881?

Answer. Our books show some four hundred and twenty-five bales of that mark received from L. C. Bryan & Bro., but I do not know if they were all from that place, as other cottons were shipped therefrom.

Question. At what time was the cotton shipped to your house in 1881 from Point Chicot?

Answer. Some time between September and the latter part of December, 1881.

137 Question. Did Mr. Bryan ship you cotton from Point Chicot in 1880?

Answer. No; he did not. L. C. Bryan & Bro. did.

Question. Did L. C. Bryan ship you cotton from Point Chicot in 1879?

Answer. He did not; L. C. Bryan & Bro. did.

Question. Who shipped cotton to your house in 1878 from Point Chicot?

Answer. I do not remember if there was any.

Question. Who shipped the cotton to your — in 1877 from Point Chicot?

Answer. I do not remember as to that year if they did or did not.

Question. Do you remember Mr. Stripling, who was tenant of Point Chicot place, and in what year he was there?

Answer. I remember two Striplings. I have met them. One of them is dead and the other living; the one that died was there and the other is now there.

Question. Did your house act as factor of J. R. Stripling when he was tenant of Point Chicot?

Answer. My firm did for one year.

Question. Did you not act for him in the years preceding the lease made to Bryan by me?

138 Answer. I do not remember how long nor in what years we did business for him.

Question. Did you or not pay me the rents of Point Chicot place for the year 1878?

Answer. If I did I do not remember it.

Question. Do you remember or not who was the immediate successor of Stripling on Point Chicot as lessee?

Answer. I do not know. I think Stripling's brother did.

Question. Are you the agent & factor of Stripling at this time?

Answer. We are his factors, we agreed to advance him money.

Question. When did you become so?

Answer. I do not remember. We did business for him last year and are doing it this year.

Question. Did you do any business with him as lessee of Point Chicot in any year prior to last year?

Answer. I do not know of his being lessee of Point Chicot in any year prior to last year.

Question. At the time Mr. Bryan leased Point Chicot in 1878 did I not converse with you upon the subject and ask you what

139 kind of a tenant he would make? If so, please give your answer.

Answer. I remember that you asked me at some time while negotiations for your lease were pending as to the character and standing of Mr. Bryan, and I remember of recommending him as an honorable man.

Question. At that date or about that time hadn't the tenant Stripling just died on the place?

Answer. I do not remember. I think he did.

Question. If Mr. Stripling was the lessee in 1878 did you know any other agent or party representing Point Chicot except me?

Answer. I did not.

Question. I note that there were some twenty-five thousand dollars in notes given in the deed of trust of Dec., 1881. What was the consideration of those notes?

Answer. Same as stated in my main examination.

Question. Were these notes of twenty-five thousand dollars all the notes given or were there others?

140 Answer. They are all I know of at this time. My books state all the notes that were furnished.

Question. Did J. E. Bryan sign the deed of trust in New Orleans?

Answer. No.

Question. How did he come to sign it in Arkansas?

Answer. Because he was not here to sign it.

Question. Did you not send up a messenger to Arkansas to see J. E. Bryan to induce him to sign the deed of trust?

Answer. My recollection is that we did not. Our travelling agent, Mr. Churchill, was in the country some place near. We requested him by letter to visit Luna and to hurry up shipments of cotton of L. C. Bryan & Bro., to get the deed of trust, if signed by J. E. Bryan, and have it placed on record.

Question. Then I understand you to say that at the time the deed of trust was signed in New Orleans by L. C. Bryan, in December 9, 1881, that on the same day notes were issued to the amount of twenty-five thousand dollars or more without the signature of J. E.
141 Bryan to the deed of trust, and that he signed the same at a later date.

Answer. Yes.

Question. At what date did J. E. Bryan sign the deed of trust?

Answer. I do not remember.

Question. How long after 9 December, 1881?

Answer. I think that it was some time during the end of December, 1881.

Question. Was Mrs. Bryan in New Orleans at the time that the deed was passed?

Answer. She was.

Question. Do you remember how L. C. Bryan signed the deed of trust in New Orleans? Was it L. C. Bryan & Bro. or L. C. Bryan only?

Answer. I think that it was signed L. C. Bryan & Bro. and L. C. Bryan.

Question. In whose handwriting are the Exhibits Nos. H^{11}, H^{12}, and H^{4}, annexed to your direct examination?

Answer. Exhibit No. H^{11}, of date Dec. 21, 1881, and Exhibit No. H^{12}, of date Dec. 29, 1881, are both in the handwriting of Mr. Carpenter, a clerk of my firm, and each has the signature thereto of L. C. Bryan & Bro. in the handwriting of L. C. Bryan. Ex-
142 hibit H^{4}, of date December 1, 1881, is in the handwriting of said Carpenter, a clerk of my firm.

Re-examination by T. J. SEMMES, of counsel for said J. L. Harris:

Said Harris says: I have a copy of the letter of L. C. Bryan & Bro., of November 26, 1881, whereof the original has been lost, mislaid, or destroyed, as stated in my examination-in-chief, and which copy I hereto attach as Exhibit H^{13}, and made same part of my deposition.

J. L. HARRIS.

Sworn to and subscribed by said Joseph L. Harris before me on

the day and year, between hours, and at the place in the caption hereof named.

ANDREW HERO,
Notary Public.

143 And on said eighteenth of June, 1883 (Monday), at the hour of ten o'clock a. m., CHARLES L. REVET, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced and examined in behalf of defendant- and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controvery in the action aforesaid, did then and there on his oath aforesaid depose and say as follows:

My name is Charles L. Revet; I reside in New Orleans, Louisiana; I am book-keeper of the firm of J. L. Harris & Co., and have filled said position since 1874; all the account currents rendered L. C. Bryan & Bro. by J. L. Harris & Co. correspond with the books kept by me, and in which books the original entries were made; in the account No. 3, for seasons of 1880 & 1881, on the 14th day of April, 1881, J. L. Harris & Co. credited L. C. Bryan & Bro.
144 with $24,645.95, leaving J. L. Harris & Co. the holders of the five notes above mentioned for twenty-six thousand four hundred and sixteen $\frac{24}{100}$ dollars, and of the small note for five hundred and ninety-nine $\frac{37}{100}$ dollars, and as such creditors of L. C. Bryan & Bro. for the aggregate amount thereof, say twenty-six thousand nine hundred and fifty-five $\frac{61}{100}$ dollars, as also for the further sum of six thousand two hundred and seventy-
145 eight $\frac{51}{100}$ dollars amount at debit net proceeds of their following five notes, viz:

1 due 15–18 November, 1881, for	$5,255	80
1 " 25–28 November, 1881, for	5,268	09
1 " 12–18 December, 1881, for	5,286	65
1 " 20–23 December, 1881, for	5,299	19
And one due December, 1881, for	5,306	69
	$26,416	$24\frac{16}{100}$

aggregating twenty-six thousand four hundred and sixteen dollars; and on May 25, 1881, all their cotton having been sold and proceeds carried to their debit, J. L. Harris & Co. rendered them a statement of account, a balance to their credit of five hundred and fourteen $\frac{80}{100}$ dollars. L. B. Bryan & Bro. recognized the correctness of this account by giving J. L. Harris & Co. in settlement of said small balance their note of five hundred and ninety-three $\frac{37}{100}$ dollars, due 1-4 November, A. D. 1881, which note being discounted from May 25, 1881, netted said balance of five hundred and fourteen $\frac{80}{100}$ dollars, thus closing this account No. 3 with L. C. Bryan & Bro. on
146 the books of J. L. Harris & Co., of L. C. Bryan & Bro. account No. 4 as per detailed statement rendered them on said May 25, 1881, said account No. 4 having been opened by J. L. Harris & Co. on the 16th April, 1881, for the seasons of 1881 & 1882.

The six notes above referred to, not having been paid as they became due, were by me charged by instructions of J. L. Harris & Co. to L. C. Bryan & Bro.'s account No. 4, in which account they appear under date of November 28 & 29, 1881, and December 13, 23, & 29, 1881. On December 29, 1881, L. C. Bryan & Bro.'s three notes of 9 December, 1881, viz., 1 due 8–11 January, 1882, for $10,000; one due 23–21 January, 1882, for $10,000.00, and one due 22–25 February, 1881, for $5,000, aggregating twenty-five thousand dollars, were discounted by J. L. Harris & Co., and the net proceeds, viz., twenty-four thousand eight hundred and thirty-eight .29 dollars ($24,838.29), placed to the credit of L. C. Bryan & Bro. as account No. 4, and said account rendered January 12, 1882, showing
147 a balance to their credit of nine thousand two hundred and sixty-one .24 dollars, with seven bales of cotton to be accounted for. Against this credit J. L. Harris & Co. held the above three notes of L. C. Bryan & Bro. previously discounted on December 29, 1881, as above stated, and aggregating twenty-five thousand dollars.

In addition to this account No. 4 J. L. Harris & Co. also kept with L. C. Bryan & Bro. an account styled cotton-purchase ac., a statement of which was rendered January 19, 1882, showing a balance at credit of ten thousand two hundred and fifteen .95 dollars, against which J. L. Harris & Co. held L. C. Bryan & Bro.'s note of December 9, 1881, for ten thousand dollars, due 7–10 February, 1882.

And to cross-examination by J. S. WHITAKER, executor, &c., in his own behalf, as one of the plaintiffs, said REVET deposes:

Question. I note that you specify five notes in your exam-
148 ination-in-chief as being discounted April 14, 1881, and also that subsequently, to close the account of that year, L. C. Bryan & Bro. gave their note for five hundred and thirty-nine .92 dollars. In thus closing this account was L. C. Bryan & Bro. indebted in any other amount to J. L. Harris & Co. at that date?

Answer. Yes; L. C. Bryan & Bro. then owed these six notes and the further sum of six thousand two hundred and seventy-eight .51 dollars, which was the amount at debit of L. C. Bryan & Bros., their running account for advances of seasons 1881 & 1882. The notes were given in reference to business of 1880 & 1881, and that of 1881 & 1882 was then open account, whereas they owed this six thousand two hundred and seventy-eight .51 dollars.

Question. I note in your deposition that you give no credit whatever for the crops received from L. C. Bryan. How do you account for this?

Answer. On May 25, 1881, all cotton received from L. C.
149 Bryan & Bro. having been sold and proceeds credited to their account of 1880 & 1881 (account No. 3), there remained a balance due J. L. Harris & Co. of five hundred and fourteen .81 dollars, for which L. C. Bryan & Bro. gave their note to settle the account of five hundred and thirty-nine .37 dollars.

Question. Then that ended the notes?

Answer. No; it ended the account, because the notes had not yet matured and were outstanding.

Question. Then I understand you to say that after receiving the crops representing cotton from Point Chicot there remained still due J. L. Harris & Co. for the years 1880 & 1881 some twenty-six thousand dollars?

Answer. I do not say cotton from Point Chicot, but that all the cotton received being credited there remained the indebtedness, after closing the account of these six notes, aggregating twenty-six thousand nine hundred and fifty-five .61 dollars.

Question. In 1881 how did L. C. Bryan & Bro. settle those notes?

150 Answer. Charged up to account of L. C. Bryan & Bro. of 1881 & 1882 (No. 4).

Question. Then later I find that L. C. Bryan & Bro. issued their notes for thirty-five thousand dollars. What were they for?

Answer. The notes were dated December 9, 1881. By instructions of J. L. Harris & Co., when handed to me, three were discounted and proceeds placed to credit of L. C. Bryan & Bro. on their account No. 4.

Question. How much, then, according to this statement on January 19, 1882, was the debt of L. C. Bryan & Bro. to J. L. Harris & Co.?

Answer. Three notes aggregating twenty-five thousand dollars, less a credit of nine thousand two hundred and sixty-nine .24 dollars, with seven bales of cotton to be accounted for.

Question. Did this balance of sixteen thousand dollars or thereabouts represent their entire indebtedness at that date?

Answer. There was another note of ten thousand dollars which had been discounted by J. L. Harris & Co. to cover account styled L. C. Bryan & Bro. cotton-purchase ac., which as made up

151 January 19, 1882, showed a balance as credit of ten thousand two hundred and fifteen .95 dollars, against which J. L. Harris & Co. held this note which was dated December 9, 1881, and was secured under a deed of trust.

Question. Were you in the employment of J. L. Harris & Co. in 1879?

Answer. Yes.

Question. With whom did they keep the account of Point Chicot plantation in that year?

Answer. I know nothing about Point Chicot plantation.

Question. Was L. C. Bryan & Bro. in existence in that year, and when did their business commence?

Answer. Yes; they commenced business with J. L. Harris & Co. in May 8, 1877.

Question. Did you see the various claims on which the deed of trust was based in writing at any time with J. L. Harris & Co.?

Answer. I know nothing about the objects of the deed of trust nor of any of the claims.

CHAS. L. RIVET.

Sworn to & subscribed before me, notary, on the day & year, at the place, & between the hours first aforesaid.

ANDREW HERO, *Not. Pub.*

152 And on Monday, the eighteenth day of June, A. D. 1883, between the hours and at the place named in the caption hereof, JOHN M. PARKER, a witness known to me to be of lawful age, being to me produced in behalf of defendants and being by me first duly and solemnly sworn according to law to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy aforesaid, did then and there on his oath aforesaid depose as follows:

My name is John M. Parker. I am a member of the firm of J. L. Harris & Co. I was not in New Orleans at the time L. C. Bryan & Bro. arranged with my partner, J. L. Harris & Co., for the deed of trust referred to in the bill of complaint filed in this suit, nor at the time of its execution in New Orleans by L. C. Bryan and his wife, on 9 December, 1881. I left New Orleans in November and did not return until about the 20th December, 1881.

153 L. C. Bryan had on several occasions assured me that in the event of his getting into financial trouble he would protect my firm in preference to all others.

About Jan. 1st, 1882, he requested me to meet him at his room in Canedy's Hotel, in this city, for consultation about his affairs. I complied with his request and met him at the place designated. The first question he put to me was, "What can I do to satisfy Whitaker? He wants his money." I replied, "I don't think J. L. Harris & Co. are under any legal obligations to pay it." I was then referring to the question whether or not the lessor's privilege followed the proceeds of cotton which had been shipped to and sold by us and expressing my opinion as to any legal obligations arising out of the receipt and sale of the cotton, for I knew my firm had made no promises and had come under no engagement to pay the lessor's claim for rent. L. C. Bryan replied to me, Certainly

154 not; but I would like you to assist me in arranging it. I gave him no encouragement and held out no inducements to him to believe we would assist him. L. C. Bryan left here on January 5, 1882, or thereabouts, and before leaving he said to me that if we did not feel safe in advancing L. C. Bryan & Bro. sufficient money to enable them to pay their creditors we had better foreclose our deed of trust at once, and he left here with the understanding that we would foreclose our mortgage and that we would not make any advances to enable L. C. Bryan & Bro. to pay their creditors.

And to cross-examination by said J. S. WHITAKER said PARKER said:

Question. Did you know J. R. & G. T. Stripling?

Answer. Yes; both of them.

Question. At what time was J. R. Stripling the tenant of Point Chicot?

Answer. At the time of his death, in 1878.

Question. Was your house doing business of the plantation at that date?

155 Answer. No, but it was doing his business.

Question. Did he have any other plantation at that date except Point Chicot?

Answer. Not that I knew of.

Question. After his death did you continue your business with the next tenant of Point Chicot?

Answer. Yes; G. T. Stripling, administrator of estate of J. R. Stripling.

Question. After that, the next year?

Answer. We did no business with the place at all after that.

Question. Who rented the place in 1879?

Answer. I understood L. C. Bryan, but I never saw the lease.

Question. To whom did your house pay the rent of 1879?

Answer. I think to yourself, J. S. Whitaker.

Question. 1880?

Answer. Same person.

Question. Was L. C. Bryan cultivating Point Chicot in 1881?

Answer. I do not know.

Question. Did you not visit the place in 1881?

Answer. I believe I did.

Question. Who was then carrying on the place.

Answer. Douglas Waterman was in charge as manager.

156 Question. For whom?

Answer. He claimed to have an interest with L. C. Bryan in the profits of the place.

Question. Who carried on the place in 1882 as lessee?

Answer. G. T. Stripling.

Question. Has the rent of that place been paid for 1882?

Answer. I think that it has been to J. S. Whittaker.

Question. Do you know of any other person that represented Point Chicot as attorney and agent?

Answer. No.

Question. You say that you never saw a lease to the present lessee. Did I not show you the lease to Stripling to show you a claim put in for your security?

Answer. I do not remember of seeing it. You told me of it.

Question. Were you not in the office at the time that I left the L. C. Bryan lease on deposit with J. L. Harris & Co.?

Answer. I do not think I was. I think that I was in the country. I have heard that it was deposited there.

Question. What time before 9 December, 1881, was L. C. Bryan in New Orleans?

157 Answer. Our books show October, but I was absent in the country.

Question. Do you know at what time the partnership of L. C. Bryan & Bro. was formed?

Answer. I cannot say.

Question. Do you not know that it was formed after 1879?

Answer. No.

Question. Did you not know of your own knowledge that L. C. Bryan leased Point Chicot in 1878 for five years?

Answer. Only from hearsay; lease not being of record, I had no means of finding it out.

Question. When you say hearsay what do you mean?

Answer. I think I heard it from Bryan.

Question. Any other party?

Answer. I remember of none other.

Question. Had L. C. Bryan been doing business with your house prior to December, 1878?

Answer. Yes.

Question. How long?

Answer. Probably for four years.

Question. In the list of his indebtedness on which was based the deed of trust, what debts of L. C. Bryan & Bro. were named?

158 Answer. I know nothing about it. I was not here when the deed of trust was made.

Question. Did you not know at the time from the parties interested what was the basis of the deed of trust?

Answer. I never heard of any claims outside of my firm. I mean debts to other than my firm

And to re-examination by T. J. Semmes, of counsel for said J. L. Harris & Co., said Parker deposes:

I hereto annex and made part of my deposition, as Exhibits P, a letter received from S. Churchill, the travelling agent of my firm, to explain the part he took in obtaining the signature of J. E. Bryan to the deed of trust. The deed of trust was transmitted to me at Luna. I had left Luna when it arrived. It was returned to New Orleans, and then forwarded to Churchill by mail, and he had left, as shown in the letter, before it reached Luna, instructing

159 Z. T. Carleton to open it and obtain signatures of J. E. Bryan and wife to it, which Carleton did.

I also annex and make part of my deposition, as Exhibit P², a letter of L. C. Bryan & Bro. of January 11, 1882.

JNO. M. PARKER.

Sworn to and subscribed by said John M. Parker before me, notary, between the hours, on the day and year, and at the time and place aforesaid.

ANDREW HERO,
Notary Public.

160 And on said eighteenth day of June, A. D. 1883, between the hours and at the place named in the caption hereof, JOHN T. WHITAKER, a witness known to me to be of lawful age, being to me produced and examined in behalf of plaintiffs and being by me first duly and solemnly sworn according to law to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the action aforesaid, did then and there, on his oath aforesaid, depose as follows:

My name is John T. Whitaker. I am a law partner of my father, John S. Whitaker, who represents the estate of Horace F. Walworth and has done so for many years. I have been in my father's office for the past ten years and have acted as his private secretary since 1877. I attend to the financial department, and during my father's absence from the city act for him. I have often been sent by
161 him to Arkansas to attend to the Walworth business. I know that J. L. Harris & Co. have been the factors who have supplied Point Chicot plantation for some years past, and I have collected money on account of rent due therefor. I also know that my father, wishing to raise some money, placed with them the five-year lease of L. C. Bryan to Point Chicot plantation as security. A memorandum of this will be found in the lease itself. I remember L. C. Bryan calling at my office in December, 1881, and requesting my father to call on J. L. Harris & Co. for rent due on January 3, 1882.

I remember also leaving this city about the 7th of January, 1882, and meeting both the Bryans at Columbia, Arkansas. They seemed very much distressed at the action of J. L. Harris & Co. in this matter, and said that they had sent them the Point Chicot cotton and expected them to pay the rent.

162 I can swear that both J. L. Harris and John M. Parker, composing the firm of J. L. Harris & Co., knew that my father was the agent of the owners of Point Chicot plantation, and that L. C. Bryan was the lessee of said plantation, and that they knew this at the time they received the cotton from Point Chicot plantation. I am positive, for they had been the factors of L. C. Bryan in 1879 & 1880, and as such factors had paid the annual rental of fifty-five hundred dollars to my father for three years, and still continued as factors to attend to the business of L. C. Bryan in 1881. In the five years' lease to L. C. Bryan no notes were given. Mr. Bryan notified my father either verbally or in writing to call on J. L. Harris & Co. for the rent.

JOHN T. WHITAKER.

Sworn to and subscribed before me, notary, on the day & year, between the hours, and on the day and year aforesaid.

ANDREW HERO,
Notary Public.

163 COLUMBIA, ARK., *Nov. 7th*, 1881.

Mess. J. L. Harris & Co., New Orleans, La.

GENTLEMEN: We drew on you 4th inst. fav. of M. E. Mayer, s. d., $334.40 for cash to pay for cotton picking & for making settlements on cotton; also, on the 5th inst., fav. st'r Vicksburg for fr't bill, $52.50; all of which you will please pay.

We have your favor of the 1st inst. at hand, and note that you understood by our Mr. L. C. Bryan that the $500.00 from Bank of Greenville on the 28th ult. would be all we would require.

We are now nearly done picking cotton, and will not need but very little more for that purpose, but for gin expenses and making

settlements on cotton it will be necessary for us to have money, and we will not draw on you for any other purpose. We are
164 now fixing the broken press on Point Chicot, and expect to start the gin on that place in a day or two.

Respectfully yours, L. C. BRYAN & BRO.,
Per R.

This is the paper marked Exhibit H[1], referred to in the deposition of J. L. Harris *and* — of J. S. Whitaker and J. L. Harris & Co. *et al.*

J. L. HARRIS.

ANDREW HERO,
Notary Public.

COLUMBIA, ARK., *Nov.* 21, 1881.

Mess. J. L. Harris & Co., New Orleans, La.

GENTLEMEN: We drew on you, 18th inst., 2 s. d's fav. J. Sayre, viz: 1, 200.00; 1,193.24; total, $393.24; also, on 20th inst., fav. st'r Chas. P. Chouteau, $300.00; all of which you will please pay.
165 We bought some cotton last week on which we had no claim and had to pay cash for it is why we had to draw on you so heavy, and we find there is considerable cotton that can be controlled in this way with a fair margin for profit, and when we do draw on you it will be for this purpose and gin expenses only.

Respectfully yours, L. C. BRYAN & BRO.,
Per RUDDICK.

This is the paper marked Exhibit H[2], referred to in the deposition of J. L. Harris in case of J. S. Whitaker, ex., *et al. vs.* J. L. Harris & Co. *et al.*, hereto annexed.

J. L. HARRIS.

ANDREW HERO,
Notary Public.

166 NEW ORLEANS, *November* 26, 1881.

Mess. L. C. Bryan & Bro., Columbia, Ark.

GENTLEMEN: We are to-day in receipt of yours of 21st, same advising sundry s. d's to pay for cotton bought for shipment to us. We note your purpose to make no further demands on us save for payment of cottons you may control thereby, and, with this as the understanding we say, yes.

Respectfully,
(Signed) J. L. HARRIS & CO.
CARPENTER.

This is the paper marked Exhibit H[3], referred to in the deposition of J. L. Harris in case of J. S. Whitaker, ex., *et al. vs.* J. L. Harris & Co., hereto annexed.

J. L. HARRIS.

ANDREW HERO,
Notary Public.

167 NEW ORLEANS, *Dec.* 1*st*, 1881.

Mess. L. C. Bryan & Bro., Columbia, Ark.

GENTLEMEN: We read carefully your letter of 26th, and advise receipt for your ac't of 70 b. c., now being landed from the steamer Henry Frank. We are more than surprised at the unreasonableness of your demands, as seen by your letter as above, particularly as those demands come right on the heels of your letter of 21st Nov., in which you assure us that "when we do draw on you it will be for that purpose (controlling cotton) & gin expenses only." It is out of the question for you to expect us to not only carry your already too large balance, but to add to it by further amounts to parties who have as good or a better right to wait than we who have waited so long already.

168 We ask your reference to our letter of 26th. You will therein see what we promise you in the way of honoring your further s. d's and note that said promise is based solely on yours as given in your letter of 21 Nov.

Respectfully,

(Signed) J. L. HARRIS & CO.
CARPENTER.

17. This is the paper marked Exhibit H[4], referred to in the deposition of J. L. Harris in case of J. S. Whittaker, ex., *et al.* — J. L. Harris & Co. *et al.*, hereto annexed.

J. L. HARRIS.

ANDREW HERO,
Notary Public.

NEW ORLEANS, *Dec.* 22, '81.

Mess. Bishop Bros., Cincinnati, O.

GENTLEMEN: We wired you last evening acknowledging receipt of yours of 10th advising that we would pay the Bryan note
169 when presented, & *ect.* This we now confirm and beg to say, by way of an explanation which is certainly due you, that, under a misapprehension of facts, we declined to pay the note when first presented and permitted a protest, as we were then almost positive that we had not come under commitment. We, however, went thro' our correspondence as best we could in the short time allowed us to do so, and finding nothing we did not hesitate to refuse payment.

Your extract from our letter (written by Mr. Foster, now deceased) shows us that our search through our correspondence was not sufficiently thorough, and we beg to express our regrets at whatever annoyance our first refusal may have caused you.

At this writing the note has not again been presented, but
170 it will probably come in during the day and will be paid by us.

Respectfully,

(Signed) J. L. HARRIS & CO.
CARPENTER.

This is the paper marked Exhibit H[5], refer-ed to in the deposition of J. L. Harris in case of J. S. Whitaker, ex., *et al.* — J. L. Harris & Co. *et al.*, hereto annexed.

J. L. HARRIS.

ANDREW HERO,
Notary Public.

NEW ORLEANS, ——, —, 188–.

Extract from our letter April 25, 1881, to L. C. Bryan & Bro.

"We suggest that you propose to pay them (Bishop Bros.) $1,000 on December 1st, and we will agree, and you can advise them or show them this letter, that if you don't then pay them that amt we will pay it for you."

Yours truly,

(Signed) J. L. HARRIS & CO.
FOSTER.

This is the paper marked Exhibit H[6], referred to in the deposition of J. L. Harris in case of J. S. Whittaker, ex., *et al.* —
171 J. L. Harris & Co. *et al.*, hereto annexed.

J. L. HARRIS.

ANDREW HERO,
Notary Public.

NEW ORLEANS, *Dec.* 16, 1881.

Mess. L. C. Bryan & Bro., Columbia, Ark.

GENTLEMEN: Our representative and the bearer of this, Mr. Sam. Churchill, visits your section on business matters of interest to us. We bespeak for him your courtesy and attentions, with the assurance that you can communicate and treat freely with him in all matters pertaining to our mutual business relations.

Respectfully,

(Signed) J. L. HARRIS & CO.

This is the paper marked Exhibit H[7], referred to in the deposition of J. L. Harris in case of J. S. Whitaker, ex., *et al.* — J. L. Harris & Co. *et al.*, hereto annexed.

J. L. HARRIS.

ANDREW HERO, *Not. Pub.*

172 GREENVILLE, MISS.

J. L. Harris & Co., N. O.

Will you pay Whitaker one-half rent due; balance in November? He continued my lease. Telegraph immediately.

Jan'y 14, '82.

L. C. BRYAN.

This is the paper marked Exhibit H[8], referred to in the deposition of J. L. Harris in case of J. S. Whitaker, ex., *et al.* — J. L. Harris & Co. *et al.*, hereto annexed.

J. L. HARRIS.

ANDREW HERO, *Not. Public.*

Copy of Telegram.

NEW ORLEANS, *Jan'y 14th*, 1882.

L. C. Bryan, Greenville, Miss.

173 No; do nothing until Parker arrives on the White.

(Signed) J. L. HARRIS & CO.

This is the paper marked Exhibit H[9], referred to in the deposition of J. L. Harris in case of J. S. Whitaker, ex., *et al.* — J. L. Harris & Co. *et al.*, hereto annexed.

J. L. HARRIS.

ANDREW HERO,
Notary Public.

NEW ORLEANS, *Jan'y 7th*, 1882.

Mess. B. Lowenstein & Bros., Memphis, Tenn.

GENTLEMEN: Owning to receipt of your favor of 5th & noting contents of same, would for answer say that Mr. L. C. Bryan was here for several days in the early part of the week and left for his home two days ago.

His arrangements were only partially completed and not to
174 an extent to warrant us in committing ourselves to the payment you name.

Regarding the S. S. Thomas s. d. for $112.80, you can send that on and we will now pay it.

Yours, & *ect.*,

(Signed) J. L. HARRIS & CO.
CARPENTER.

This is the paper marked Exhibit H[10], referred to in the deposition of J. L. Harris in case of J. S. Whitaker, ex., *et al. v.* J. L. Harris & Co. *et al.*, hereto annexed.

J. L. HARRIS.

ANDREW HERO,
Notary Public.

COLUMBIA, ARK., *Dec.* 21, '81.

Mess. J. L. Harris & Co., New Orleans, La.

GENTLEMEN: In the matter of your past purchases and sales of cottons for future delivery for our risk and account we desire to fully confirm your action in all that you have so far done.

175 You have at this writing purchased for us a total of eighteen hundred bales, which same was done under our instructions and has our sanction.

You have also sold for our ac. three hundred bales, leaving now a net purchase of fifteen hundred bales of cotton bought by you for actual delivery in the month of March, 1882. It is our wish that you, at your option and discretion, purchase further for our ac. to the extent of twenty-five hundred bales more, and in making these purchases it is understood and agreed that with them, as with all others already made, we are buying and selling cotton that is actu-

ally to be delivered, and any question of selling our contract on the basis of difference in prices must be a matter for after consideration.

Respectfully, L. C. BRYAN & BRO.

This is the paper marked Exhibit H[11], referred to in the deposition of J. L. Harris in the case of J. S. Whitaker, ex., *et al. v.* J. L. Harris & Co. *et al.*, hereto annexed.

J. L. HARRIS.

ANDREW HERO, *Not. Pub.*

175*a* NEW ORLEANS, *Dec.* 29, 1881.

Messrs. J. L. Harris & Co., New Orleans, La.

GENTLEMEN: Referring to your letter of date Dec'r 21, '81, and confirming in this all that we therein said, we desire to add that if in the purchase or sale of cottons made by you for future delivery for our ac. you at any time previous to the date of delivery named in the purchase or sale see proper & consider it expedient to sell the contract or contracts you may make or have made for our ac. you are at full liberty to do so and your action therein will have our sanction, and now that we may comply with your demand to be put in possession of sufficient funds to provide ample margins to cover any possible loss that may occur we request that you open for us a new ac., to be known as the L. C. Bryan & Bro. cotton-purchase ac., and that you discount (at the rate of 8% per annum) our note of date Dec'r 9th, 1881, drawn in your favor for $10,000.00 & due Feb'y 7–10, '82, & place the net proceeds so resulting to our credit in that ac. to be applied to the payment of whatever losses may accrue from the purchases or sales of cotton for future delivery for our ac., but we stipulate that at no time must you permit our losses, if any there be, to exceed the amount at our credit in this new ac. In addition to the above-named note we have further executed our several notes in your favor, viz., one of date Dec'r 9th, @ 30 days, for $10,000.00.

176 NEW ORLEANS, —— —, 1881.

One of like date, @ 45 days, for $10,000.00 and one also of like date, @ 75 days, for $5,000.00, making a total of $25,000.00, all secured by deed of trust. We wish you *you* to discount these last-named notes, aggregating $25,000.00, at the rate of 8% per annum and place the net proceeds to the credit of our present ac.

L. C. BRYAN & BRO.

This is the paper marked Exhibit H[12], referred to in the deposition of J. L. Harris in case of J. S. Whitaker, ex., *et al. v.* J. L. Harris & Co. *et al.*, hereto annexed.

J. L. HARRIS.

ANDREW HERO,
Notary Public.

COLUMBIA, ARK., *Nov. 26th*, 1881.

Mess. J. L. Harris & Co., New Orleans, La.

177 GENTLEMEN: We have this day drawn on you, favor J. Sayer, 3 s. d's, aggregate $450.00, which you will please pay-

We have bills payable which will mature 1st prox., which we ask and hope you will pay, viz:

One note favor Bishop Bros., Cincinnati, $1,000.00; one note favor Thos. —— & Levy, N. O., 655.75; one draft on B. Lowenstein Bros., Memphis, Tenn., 1,960.16; open ac. due Evansville Furniture Company, Evansville, Indiana, $243.45. The above are all our bills that will mature before Jan. 1st. We some time ago placed in the hands of B. Lowenstein & Bro. as collateral notes taken by us from some of our tenants for amounts due for rent, and we have now taken up those notes by giving draft on you as above.

We have now cotton in the bale—70 bales at Leland, which will go forward this trip of the "Frank;" 71 bales at Luna, and 40 at Point Chicot, which were too late for the Frank this trip;
178 will have large shipment next trip of Chouteau unless some accident should occur.

Respectfully yours,

(Signed) L. C. BRYAN & BRO.

This is the paper marked Exhibit H[13], referred to in the deposition of J. L. Harris in case of J. S. Whitaker, ex., *et al. v.* J. L. Harris & Co. *et al.*, hereto annexed.

J. L. HARRIS.

ANDREW HERO,
Notary Public.

179 *J. S. Whitaker, Esqr., in Account Current with J. L. Harris & Co.*

1880.					
October	9.	To cash handed you		$600	
1881.					
Jan'y	6.	" " " "	$636 40		
		" " " p'd y'r s. d. fav. Sun Mut. Ins. Co.	307 40		
				944	18
	10.	To cash p'd y'r note fav. Chas. S. Rice		800	
	11.	" " " Factors' & Traders' Ins. Co.		700	20
	20.	" " " y'r note fav. Chas. S. Rice		700	
	31.	" " " " " yourself		1,600	
1881.					
Feb'y	9.	" interest on $600 from Oct. 9, '80, to Jan., '81		11	20
		" " cash handed you, balance		144	42
				$5,500	00

CR.

1881.			
Jan'y	27.	By L. C. Bryan & Bro. for amount due by them for lease of the Point Chicot place for 1880	$5,500 00

E. O. E.

NEW ORLEANS, *9th Febr.*, 1881.

This is the paper marked Exhibit S, referred to in the deposition

of J. S. Whitaker in the case of Sam. Whitaker *et al. vs.* J. L. Harris & Co. *et al.*, hereto annexed.

J. S. WHITAKER.

ANDREW HERO,
Notary Public.

180 COLUMBIA, ARKANSAS, *Dec. 29th*, 1879.

Judge J. S. Whitaker, New Orleans.

DEAR SIR: I have written to Mess. J. L. Harris & Co., your city, to pay my note, your favor, for five thousand five hundred dollars, $5,500.00, maturing January 1–4, 1880.

Please present same to them for payment and oblige.

Respectfully yours, L. C. BRYAN.

This is the paper marked Exhibit W, referred to in the deposition of J. S. Whitaker in the case of Whitaker, ex., *et al. vs.* J. L. Harris & Co. *et al.*, hereto annexed.

J. S. WHITAKER.

ANDREW HERO,
Notary Pub-ic.

181 COLUMBIA, ARK., *January 11th*, 1882.

Mess. J. L. Harris & Co., New Orleans, La.

GENTLEMEN: We see by quotations that cotton has again advanced in price.

We now beleive that bottom has been reached and reaction commenced, and, if you have purchased for our account 4,000 bales for future delivery, feel confident that our profits will be such as to warrant you in taking up our outstanding paper and allow us to continue in business as we now are.

We would greatly prefer doing so, and, if there is any way that we can honorably do so, would much rather do it than make an assignment and change the style of our business.

182 If the advance in prices is sufficient to warrant you to gratify our wishes you will greatly oblige.

Yours truly, L. C. BRYAN & BRO.

This is the paper marked Exhibit P, referred to in the deposition of John M. Parker in case of J. S. Whitaker, ex., *et al. vs.* J. L. Harris & Co. *et al.*, hereto annexed.

JNO. M. PARKER.

ANDREW HERO,
Notary Pub-ic.

LUNA, ARK., *December 21st*, 1881.

Mess. J. L. Harris & Co., New Orleans, La.

GENTLEMEN: I reached here Sunday evening and found that Mr. Careton had returned the papers forwarded to Mr. Parker, and consequently saw all the parties whose names I had before going to Mr. Bryan's. Joe Davis will ship 15 b. c. in a few days, which
183 will close his shipment for the season. He wishes you to pay a s. d. of his in favor of Ford & Broseker for $100.00; says

that he will be able to settle in full, as he is negotiating a loan with old man Rose @ 6%, and that if he is successful in that he will not need a commission merchant; anyway, he claims that you are safe, as you have a deed of trust on his place. Hynes will have 18 b. c. to ship,which will close his shipments for the season. George Reid has shipped 275 b. c.; 200 have been sold, making his credit $4,119.86, debits $1,097.22, leaving to his credit $3,022.64. He has 76 b. c. to sell @ 45 per bale; will make $3,420.00, which will leave $6,442.64 to pay on his note of $5,000.00. He drew a few days since for $500.00, which will leave him some $400.00 to his credit. I understood you to say that he had only shipped 62 b. c. Robinson wishes you to write him when Royster, the administrator of the Dunn estate, can be found, as he wishes to get service
184 on him in the Dunn case. He received the note left by Mr. Parker with the negro hotel-keeper at Lake Village; says that he will try and get a decree to have Dunn's interest in the place sold at next term of court; will get a decree in the Sessions case in January and have the land sold; is not able to pay but little on our claims against himself; will have about 8 b. c., the proceeds of which will go to his credit; 4 of them will be shipped by Mr. Z. T. Careton; says that he will try and raise enough money to pay the taxes on the Luna property.

The crop raised on his farm has to go to pay Ford, who advanced him $1,800.00 to pay his farm out. This paid will leave him 300 acres of cleared land clear of debt, and that next season he can clear everything off.

I handed to L. C. Bryan my letter of introduction, and, after
185 a few minutes' conversation, handed him the letter written by Mr. Harris. He read it, handed it to his brother Joe, then both left the office for 10 minutes, returned, and L. C. Bryan called me into the store-room and said the reports as to his gambling were false; that he played poker he did not deny, but claimed that he was ahead of the game; had never had to draw on the house for any money to pay any gambling debts, and that at no time had he ever lost over $300.00; said that if you were alarmed he could raise the money and pay you off. I told him that you heard the reports and did not beleive them, but, as he was a personal friend, thought it your duty to advise him of the report; that our confidence in him was not shaken by anything in the shape of reports that he said were false. This seemed to satisfy him. He shipped
186 180 b. c. Monday; will have 40 to ship in 6 or 8 days from the Leland place and from his own place about same amount. This will be the bulk of his shipments. He expects to get 40 or 50 bales more before the season closes in 1 & 3 bale lots. He drew in favor of the Choteau the other day for $800.00 and in favor of J. Sayers $75.00 to pay cotton balances; will probrably draw for $500.00 in a day or so to pay for cotton; will also write you in a day or two asking you to forward check to Evansville to pay the $243.45 due there. Joe Bryant says send the deed of trust up to Carleton and he will sign it; that they are perfectly willing to make you safe. L. C. Bryan will leave here

Sunday for New Orleans. I think they are willing to do all you may ask, and, from his statement of his affairs, perfectly able to make you safe. The old man seemed to be much hurt that Mr.
187 H. should place any reliance in the report of his having lost any such amount of money. I spent half the day with him, and I think disabused his mind as to the affair making any impression on Mr. H.

I will leave here to-night for Arkansas City. You can write me at Little Rock.

Respectfully, SAM. CHURCHILL.

Have had heavy rains here all day Monday and Tuesday. To-day it has the appearance of clearing off.

S. C.

This is the paper marked Exhibit P, referred to in the deposition of John M. Parker in case of J. S. Whitaker, ex., *et al. vs.* J. L. Harris & Co. *et al.*, hereto annexed.

JNO. M. PARKER.

ANDREW HERO,
Notary Public.

188 GILBERT H. GREEN, being duly sworn by Mark Breeden, Jr, notary public, to speak the truth, the whole truth, and nothing but the truth in the matter in controversy, and being examined in chief on behalf of complainants by Mess. J. S. and J. T. WHITAKER, doth depose and say as follows:

Question. What is your business?

Answer. General commission merchant.

Question. How long have you been engaged in that business?

Answer. Ten years, sir.

Question. Where?

Answer. In New Orleans, sir.

Question. What is your business confined to in regard to cotton? Are you a cotton factor?

Answer. We are what is termed in New Orleans as cotton
189 buyers, sir.

Question. What was your business in 1881 and 1882?

Answer. Exactly the same as it is at present, sir. There has been no change in our business since we commenced.

Question. There has been no change since you commenced?

Answer. No, sir; none at all. The style of our firm has changed, owing to the death of my father, but there has been no change in the business at all.

Question. Have you any recollection if a purchase made by you of cotton in 1882 from Mess. J. L. Harris & Co.?

Answer. Well, sir, we purchased from them frequently. Do you refer to any special lot?

Q. Yes.

190 Answer. We purchased cotton from Mess. Harris & Co. very frequently—well, for several years—and we purchased various lots from them in 1881, at various times, and in 1882.

Question. When a sale is effected or a purchase is made how is that done? What is done in regard to the cotton that is sold? What do you receive from the seller?

Answer. Do you mean what documents do we receive from the seller?

Question. Yes.

Answer. They give us an order for the cotton on the press and then we take it at our convenience—as soon as we can, generally.

191 Question. Do you remember any order given to you by Harris & Co. in the early part of 1882 for cotton, in January, 1882, for cotton; and, if so, for what amount?

Answer. We purchased from J. L. Harris and Co. towards the latter part of December, 1881—somewhere about the 28th or the 29th—942 bales of cotton.

Question. When did you get your order for that cotton?

Answer. Of that, sir, we have no record on our books at all, because when the order is sent in to us we keep no record of it. The factors make out the orders. Sometime they send them in immediately, and sometimes in the course of a day or two. They very often involve a considerable deal of work in making out a copy of the marks, the shipment, and everything of that sort; and

192 we never keep a record when the order is sent in to us.

Question. Is it not customary with the cotton purchaser to use a broker in making these purchases?

Answer. The general custom of the trade, sir, is to use a broker. We use a broker ourselves at present. At that time we were buying our own cotton, and we employed a young man, who went around the market with me and assisted me in the purchase of cotton; but he was not a regular broker.

Question. Did you receive any order for the delivery of this 940 bales of which you speak from J. L. Harris & Co. on the 28th or the 29th of December, 1881, or at any time before the 1st of January?

193 Answer. Yes; in my black book here, on which all the cotton taken is noted, will show that we received a portion of that purchase on the 31st December, 1881. The balance of it was taken in the early part of January, as soon as the weather permitted, because I can remember distinctly of the difficulty we had on account of the weather. We had very bad weather, and it was very difficult indeed to receive the cotton on account of the rain. The black book will show.

Question. Will you be kind enough to turn to your black book?

Answer. (Looks at black book.) We received of that cotton firm, J. L. Harris & Co., 185 bales on the 31st December, 1881. We further received on the 5th of January, 1882, 237 bales,

194 and we further received on January 10th, 1882, 517 bales, making up the whole lot of 942 bales, less 2 bales rejected as mixed, I believe.

Question. By reference to your order book state when you received the orders for these cottons.

Answer. That would be impossible to tell, sir, because we keep no record at all of when the orders are sent in to us. They are sent in at the convenience of the factors.

Question. What do you do with the orders you get?

Answer. Give them to our classer.

Question. Who is your classer?

Answer. Mr. Poumaroux.

195 Question. Where is Mr. Poumaroux at present?

Answer. Mr. Poumaroux is at present at the press classing cotton.

Question. At what press?

Answer. That I cannot tell you, sir. We are taking cotton at five presses to-day, and I don't know at present writing where he is.

Question. What price did you pay for this cotton?

Answer. The price for the whole cotton round, sir, was 11¼ cents.

Question. At what time did you pay for this cotton?

Answer. We gave in advance to Mess. J. L. Harris & Co., and then the whole thing was settled up. We gave in advance to Mess. J. L. Harris & Co. toward the latter part of December, if I remem-

196 ber aright, on the day that the purchase was effected, and then we settled up the final invoice as soon as the cotton was received in the ordinary course.

Question. What advance did you make to J. L. Harris & Co. on the 31st December?

Answer. That, sir, I cannot tell without I refer to my books. We have no record of that in our black book.

Question. Can you give us a statement of that further on?

Answer. Yes, sir.

Question. And send it over?

Answer. Yes, sir.

Question. That will be furnished and annexed?

Answer. Yes, sir—that is, to the best of my knowledge, with-

197 out looking at the books. Of course, it is so long back I may be mistaken.

(Exhibit to be marked Green No. 1, December 1st, 1883.)

Question. Did you keep a cotton journal of the classifying and the like of your cotton?

Answer. Here it is, sir.

Question. That is the journal?

Answer. That is what we call our black book in the cotton business, which comprises all the cotton received and the classes given to them.

Question. Does this book show anything more than the marks of this cotton?

Answer. It shows the marks and the classes, the vessel by which it was received, and the factor from whom received and the press in which it was stored.

198 Question. Will you furnish us a statement of that?

Answer. Yes, sir. I will give you an extract from the book before us.

(Exhibit to be marked Green No. 2, December 1st, 1881.)

Question. What does Mr. Poumaroux do with the orders received for this cotton?

Answer. He takes them down to the presses, sir, to have the cotton checked off properly—to have the cotton turned out when he wants it.

Question. What is done afterwards with those orders, if you know?

Answer. The press keeps them, sir, as their vouchers. They give us the cotton and keep them as vouchers for it.

Question. Those orders show the dates; they are dated, I take it?

199 Answer. Yes, sir; all dated.

Question. All dated. They are orders to whom?

Answer. They are orders on the press by the factor for the cotton, specifying the marks and all the details of it.

Question. In purchasing that cotton for 11¼ cents how was the price finally to be paid for that cotton?

Answer. When all the cotton was received, sir.

Question. Did it not have to be weighed?

Answer. Yes, sir. We call receiving cotton here when we class it and weigh it. That is the accepted term for it here.

200 Question. At the time you made the purchase of this cotton do you know whether the shipper of the cotton was present or had anything to do with it?

Answer. Yes, sir; I saw him in Mr. Harris' sample-room that day.

Question. Do you know his name?

Answer. The man's name I cannot swear to, but if the man was to come before me to-day I would recognize him immediately.

Question. Well.

Answer. He was up from the Mississippi river somewhere. I only saw him once in Mr. Harris' office, when we were trading for the cotton.

Question. Did he intervene at all in the sale?

201 Answer. He was consulted by Mr. Harris before me. What passed between them I don't know, but I remember distinctly Mr. Harris consulting with him.

Question. What time was that?

Answer. That was the day the sale was perfected, to the best of my knowledge.

Question. Do I understand you to say that a sale can be perfected for cotton without giving an order?

Answer. Yes, sir; it is done every day. In the ordinary course we see the cotton and make our offer for it and it is accepted or rejected. Then, if accepted, the order is made out and sent to us.

Question. Was all this cotton in the city?

202 Answer. No, sir; a portion of it was not here. There was a portion of that cotton sold to arrive, and was guaranteed to us to be equal to the average of what we bought by the owner him-

self. Mr. Harris made the statement to me. The cotton arrived, and we found it equal. It was found to be equal to what was represented, and we received it.

Question. What portion was to arrive?

Answer. As well as I can remember it was sixty bales.

Question. By what boat did that arrive here or was it to arrive?

Answer. It was to arrive by the boat. As well as I can remember it was the steamer Frank.

Question. When did it arrive?

203 Answer. Ah; that I cannot say. In the early part of January, though.

Question. It is understood that the witness will furnish a statement of how the cotton classed, the price paid for the same, the details of the classifying, the mark, sand whatever matters are found in the black book of the witness that describe or determine the character of the cotton; that is all we want; and when it was paid for, &c., and when the cotton was received.

Answer. Yes, sir.

Cross-examination by Mr. T. J. SEMMES in behalf of Mess. J. L. Harris & Co.:

Question. Do you know, Mr. Green, when the cotton

204 arrived in any other mode than from the fact that you received an order for it after it did arrive? In other words, is your memory correct in saying that it arrived in January?

Answer. A portion of it was received in December.

Question. But I mean these sixty bales that were to arrive.

Answer. Yes, sir.

Question. Do you know when the order was given to you or do you remember the date of the order?

Answer. Well, sir, the order could not have been given before the cotton arrived here.

Question. Of course not. Do you know when the order was given?

Answer. No, sir; we have no record of that.

205 Question. Why do you say the cotton arrived in January and not in December?

Answer. That is all I can remember, sir.

Question. You don't propose to specify the date except from memory?

Answer. No, sir.

Question. Mr. Green, when you give the classifications of the cotton, various portions of it will be of different classes?

Answer. Yes, sir; there are some 6 or 8 different classes of it.

Question. When a sale is made of different classes you average it, do you not, to one class?

Answer. Yes, sir; certainly; make an average to one class.

Question. Now, what class was that cotton sold for on the

206 average thus attained?

Answer. The cotton was not sold on a class; we bought it

on the table as it stood; of course, the factor classes cotton one way and we class it one way, and we may class it entirely different.

Question. You class it yourself afterwards?

Answer. Yes, sir.

Question. That is not a part of the sale?

Answer. No, sir; we paid 11¼c. as it stood on the table. The cotton turned out as it was represented on the table and we took it.

Question. Well, was that the market price of that class of cotton on that day; was it a fair price?

207 Answer. My mind is very clear on that fact from this circumstance, that I can swear to: At the time we bought this cotton there was going around the market buying cotton with me Mr. Oscar Mazerat. Mr. Oscar Mazerat had been our classer for four years and had then went around the market buying cotton with me for two years.

He has a brother here who is one of the largest cotton brokers in town. At the time we were on excellent terms, and very frequently when we bought he looked at it, and I remember perfectly that on that day Oscar told him what we had paid for the cotton, and he told me that we had paid ⅛c. more for it than the cotton was worth. That fact is so distinct on my mind that I can swear to it anywhere.

208 Question. Is there anything unusual in this market to buy cotton to arrive in the way which this was bought?

Answer. Not at all. We do it very frequently. A factor may have not more than a portion of a cotton shipment—frequently 20, 30, 40, or 50 bales on another shipment, and he will simply state to us here is 200 or 300 bales and I have so many bales of the same shipment to arrive, and I will guarantee it equal to the average. If the cotton turns out equal to the average we accept it; if the cotton does not turn out equal to the average we reject it.

Question. When that cotton arrived and was examined here was it rejected?

Answer. Two bales we rejected—two bales; not of the 60; out of the whole lot two bales rejected. We rejected them for mixed or dusty. I cannot state now which it was for.

209 Question. Why do you say that you do not think that these two bales rejected were part of the 60? Do you remember whether they were or were not?

Answer. I cannot swear to it, sir; I cannot swear to it. They were rejected out of the whole lot.

Question. Out of the whole lot? What was the reason they were rejected?

Answer. They were either rejected for being mixed or dusty or water-packed. Those are the three causes for which we reject cotton.

GILBERT H. GREEN.

Sworn to and subscribed before me this 6th day of December, 1883.

MARK BREEDEN, JR.,
Notary Public.

210 GEORGE E. PITCHER, being duly sworn by Mark Breeden, Jr., notary public, to speak the truth, the whole truth, and nothing but the truth in the matters in controversy, and being examined in chief on the part of complainants by Mess. J. S. & J. T. WHITAKER, deposeth and saith as follows:

Question. Mr. Pitcher, being sworn to produce certain papers and documents, to wit, the orders from J. L. Harris & Co. in favor of Gilbert H. Green & Co. for certain cottons in the interval from 15th of December, 1881, to the 15th of January, 1882, produced the following documents:

Exhibit marked "A," Dec. 1, '83.
Exhibit marked "B," Dec. 1, '83.
Exhibit marked "C," Dec. 1, '83.

211 Question. Now, Mr. Pitcher, will you be kind enough to state your business?

Answer. I am one of the firm of J. P. Parker & Co. and the manager of Penn's cotton press. In consequence of the stock at the press we were compelled to store a portion of this cotton—something like, well I don't know exactly how much it was—in Terrell's press. The order will show these (Exhibit A). I think there is a little memorandum there of how much was stored in that press.

Question. The paper produced by you (Exhibit A) does not represent the order of any cotton for the month of January, and the last entry upon it is of December 23, '81. We wish the order for the cotton after the 27th of December, '81.

212 Answer. I will state, Judge, in reference to that, owing to the manner in which the business is conducted in the press, that we have no memorandum of when an order is received at the press. An order may come there on the 1st of December and not be delivered until January. When we are ordered by the brokers to haul it out we haul it out for shipment. I don't know when this order came in—the exact date received; it may be dated the 1st or the 15th or the 20th of December; but we take no memorandum of the date when the order is received at the press. The only recognition we make of it is when the cotton is called for to be delivered—shipped.

213 Question. Mr. Pitcher, Mr. Green has stated here that he purchased cotton in large amounts of Mr. Harris at different dates. The question now before us is in regard to 940 bales of cotton for which an order was given to you for delivery, say, on the 31st of December, '81, and thereafter of the cottons. Be kind enough to produce the orders for that cotton, for 940 bales referred to. The paper you introduced is not the paper we want here—require here (Exhibit A).

Answer. Well, sir, if there is any other paper in existence in regard to that cotton I don't know it.

Question. You have no paper, then, showing the delivery to Gilbert H. Green & Co. of 940 bales of cotton, or less than that amount, after the 31st of December, '81?

214 Answer. This paper does not show the delivery of it. The

delivery of the cottons at the press is by shipment or by restoring for their account. These are sample orders. An order may be presented by the factor, by the buyer or broker, and they may never take the cotton out of the press for several days, as it may be re-stored for their account. The usual manner is by shipment, except where cottons are bought on speculation. So far as this order is concerned, there is no recognition of Gilbert Green receiving it. Our books will show the shipment. This sample order has not reference to that part of it, but only that he received and bought this cotton apparently, and the cotton has been delivered to them.

215 The dates of the receipts of these cottons are entered in the yard clerk's book under the dates that they come into the press and the dates of shipment. As these cottons are delivered they are checked out of this yard book, and the only record that we have of the dates of delivery is by the shipment order—that showing the shipment or that it is to be restored for account of somebody else.

Question. What is the name of your yard clerk?

Answer. Kisk; W. E. Kisk.

Question. Is he at present in your employ?

Answer. Yes, sir.

Question. Was he at that time?

Answer. I think he was.

216 Question. Can you send him here?

Answer. Well, I think I can do it right away. Let me know what book you want.

Question. I merely tell you that this is not the order for cottons. This is (referring to Exhibit C), but this was not sent to you.

Answer. This order (Exhibit C) was sent to Terrell's press.

Question. Mr. Pitcher, handing you the order produced in Penn's press, I want to know on what date—on what date of the month did you receive that order?

Answer. I cannot tell you. As I told you before, we never keep any record of this. When the orders come in to the press it is not customary with any of the presses—it is not customary in

217 the press business to keep any record of the dates that the orders are received, unless the yard clerk may have for his own special benefit some private mark that he puts on it. So far as the proprietors of the press are concerned, in my business, we never keep any record of those dates.

Question. May you not have received that order in January, 1882?

Answer. I have no reason to think so, sir.

Question. Do you know anything about it?

Answer. I do not.

Question. Is that the original order that was sent you (Exhibit A)?

Answer. That is the only one that I know of in existence.

218 Question. Have you not got that copy in your record book?

Answer. We never copy them except in the yard clerk's book, as I tell you.

Question. Where is the yard clerk's book?

Answer. At Penn's press.

Question. Can you produce the yard clerk's book?

Answer. I presume so, sir.

Question. Is the date given in that book of when the orders are received?

Answer. The date in the yard clerk's book is the date that the cotton is received, and by what boat, by what conveyance, railroad or otherwise.

219 Question. I mean the orders for the cotton to Gilbert H. Green & Co.

Answer. That I don't know.

Question. That you don't know?

Answer. No, sir.

Question. You can produce that book, can you?

Answer. I presume so. I won't say positively, but we keep all those documents pretty safely.

Question. Who keeps that book?

Answer. The yard clerk; at the end of each season we put them away. We handle about 8,000 bales of cotton, and at the end of each year we put them in a box and nail them up, and put them in the warehouse, in one portion of the press; have to find these

220 there; I presume the yard clerk's book is up there put away just as carefully as these I have here.

Cross-examination by Mr. SEMMES:

Question. This paper which you have produced, purporting to be an order from J. L. Harris & Co., you have produced from the archives of your press?

Answer. Yes, sir.

Question. On the call of counsel of the opposite side?

Answer. Yes, sir.

Question. I see a good many pencil marks on it, some of them on the various columns, and then some blue marks—blue pencil marks. Can you tell me who put those there and when they were put there?

Answer. Well, I presume they were put there by the differ-

221 ent employés in the press. The yard clerk has to make his check first—some check out of his yard book. Then the book-keeper has to check this book.

Question. This is part of the operation of the delivery?

Answer. Yes, sir. The weigher may check it. I don't know it, because there are several hands there in the press, the yard clerk and the book-keeper and the weigher.

Question. I perceive on the order, on the head of it, in writing, says Penn's press will please deliver to G. H. Green & Co. 882 bales of cotton, as below; and I find the footing up of one column is 386 bales and the footing up of the other column 497 bales, which makes 883 bales. Is there any mistake about that?

222 Answer. That I don't know, sir; the yard clerk's book will show that. Very often there is a clerical error occurring in the addition.

Question. Then I see under the signature of J. L. Harris & Co. 883, one rej., which, I suppose, means one rejected. What does that mean, then?

Answer. One rejection, I suppose.

Question. Deducting one from 883 leaves 882 bales?

Answer. Yes, sir. I think that writing is my book-keeper's.

Question. Whose handwriting is that account of G. H. Green & Co.?

Answer. Macmurdo's—C. J. Macmurdo's—my book-keeper's.

223 Question. Written at your press?

Answer. Yes, sir.

Question. Why was that written there?

Answer. Sometimes the orders are transferred to other parties. The book-keeper writes the name of the party the cotton is delivered to, that he may properly render his bill.

Question. Was this cotton ever transferred by Gilbert H. Green to anybody else?

Answer. Never, to my knowledge.

Redirect examination by the Mess. WHITAKER:

Question. I find on this account, this statement, on this order you furnished, the words: Account G. H. Green & Co., January 10, '82; and I find at the head of this order to the press, New

224 Orleans, Dec. —, 1881. According to this statement—this order—at what time was the cotton referred to in this placed to the account of G. H. Green & Co. by your presser?

Answer. My book-keeper will have to answer that question, Judge. I am not familiar with the dates on the books. I don't keep the books.

Question. What is the name of your book-keeper?

Answer. Macmurdo. I keep the run of my business—the management of it—but the details he attends to.

Question. What is his name?

Answer. C. J. Macmurdo.

Question. Is he at the press?

225 Answer. I don't know. I suppose he is. He was about to start down-town. He is either at the press or down-town.

Question. We want him here to explain this statement.

Answer. Yes, sir.

Recross-examination by Mr. SEMMES:

Question. Have you any books here now produced upon this occasion to show when that cotton was transferred—books of the press—to the account of Gilbert H. Green & Co.?

Answer. I have got some books there; I don't know.

Question. Look at these. (Hands a book to witness.)

Answer. I find one book here, which is called the order book, which reads, "Penn's press: Compress & sent to ship 'Mellmerby,' for Liverpool, 185 bales of cotton, and oblige Gilbert H. Green

226 & Co." This is dated December 31st.

Question. What is this book?

Answer. This is the order book—the shipping order book.

Question. On reference to your order book what do you find in regard to the disposition of this cotton by Gilbert H. Green & Co.—the cotton in question by Gilbert H. Green & Co.—and state the date at which this disposition was made.

Answer. Mr. Semmes, before you go on there it will be necessary to identify these orders. I am picking these out on those dates; these are the shipping marks.

Question. I will take the entries, and if I don't identify them it don't amount to anything.

227 On page 127 is the following entry: Compress and send to ship "Mellmerby," for Liverpool—

L A S	49
T D A	43
Y O F	48
M O N	18
[S H]	21
(31)	6
Aggregate	185 b. c.,

which stand for bales of cotton.

Question. And oblige Gilbert H. Green & Co., per A. Parmaroux, December 31, '81?

Answer. Yes, sir.

Question. Now, where is the other entry?

On page 136 I find the following entry: Penn's press: Please compress and send to S. S. Mellmerby, for Liverpool—

A D O	28
L P H	97
F R E	100
D R E	99
J N K	59
R Y E	63
M U L	36
L E R	12
228 O J L	5
W E F	19
Total	518 b. c.,

and oblige Gilbert H. Green & Co., per G. Mullar, Jan. 9, '82. I perceive on this order, which is dated Dec. —, 1881, and which calls for 882 bales in writing and 883 in figures, the following entries—after the signature of J. L. Harris & Co. the following figures: 185, 519, which, added together, make 704, 1 rejection deducted, leaving 703, and then, under 703, 179; right opposite to which are the words "at Terrell's."

Answer. It means at Terrell's press.

Question. You mean, then, only 703 bales—bales of cotton—was in your press and 179 was at Terrell's?

Answer. That is what those figures call for, but I don't
229 swear it. The yard clerk will show that.

Question. That is the meaning of the figures?

Answer. That is the meaning of the figures; yes, sir.

Question. Now, I perceive that the shipments referred to in this book, already testified to by you, page 127, 185 bales, and page 126, 518 bales, make up 703.

Answer. That I will testify to, that those two have been shipped under those dates.

Question. You can testify from these entries that these 703 bales were shipped under those dates by Gilbert H. Green & Co.?

Answer. Yes, sir.

Question. And were part of the 882 shipped by Penn's press
230 on account of Gilbert H. Green & Co.; were part of this lot of 882 referred to in this order?

Answer. I cannot say that. I presume so, but I cannot say so just now.

Question. But you can assert it when you see your books?

Answer. Yes, sir.

Question. You will please furnish it in a memorandum as a part of your testimony, to be annexed.

Answer. If you will excuse me for a moment perhaps I can find it right here. What is the date?

Question. December 31st is one entry and January 9, '82, is the other.

Answer. I can identify it now—the number of the order—
231 in another book that I look at.

Question. What is that book?

Answer. This book that I now look at is called the "black book." It is the order of Gilbert Green's classer and shipper, signed O. Mazzerat. This is where our order came into Penn's press—the instructions how to dispose of this cotton. Gilbert H. Green sends his classer, whoever he may be, to us and he shows us J. L. Harris & Co.'s order to Gilbert H. Green, and we identify this with the number of the order.

Question. The number of this order is 450?

Answer. Yes, sir.

Question. Now take the shipping mark and — if it is of the same—

	L A S	49
232	T D A	43
	Y O F	48
M O N		18
[T H]		21
(31)		6 bales.
Total		185

Answer. Yes, sir.

Question. Now, see if you can identify the entries on page 136, before referred to, under date of January 9, '82; whether you can

identify by the mark of the cotton whether it is a portion of the cotton referred to in order No. 450.

Answer. I find an order here from J. L. Harris & Co. to Gilbert H. Green & Co., signed by the same party, Mazzerat, the number of order 450, which identifies the cottons described in this order—in the order presented at the press—No. 450, given by Harris on the press, and the number of the bales is 518, and the marks, the ship-
233 ping marks, correspond with the ship marks, page 136.

Question. Why is it this order for 882 bales of cotton should be given on your press in favor of Gilbert H. Green & Co., this order 450, when the cotton, all of it, is not at your press, but it appears 175 were at Terrell's?

Answer. I stated that in a previous question, but I will answer it again. At this particular season it was very wet. We were compelled to store, on account of being crowded at the press, some cotton at Terrell's; had cotton on the street there; could not receive it and could not take it away. We had about 2,300 to 2,500 bales in Terrell's press, and a portion of this shipment as it came in from a different source went to Terrell's press.

234 Question. Any one who stores with you gives an order on you, and it is stored at your responsibility, although scattered about at other presses?

Answer. Entirely so; they give an order on us.

Question. How long after the sale of cotton takes place do you usually get an order for its delivery?

Answer. Well, it varies. After the cotton is received, you say?

Question. No. How long after the sale is made by the factor of the cotton, how long after the sale is made, is it the custom of the factor to give an order upon the press for its delivery?

Answer. My impression is they give an order almost
235 immediately after the sale. I am not positive as to that.

Complainants' counsel offers in evidence the original order of Harris & Co., produced by Terrell's press on demand of complainants' counsel, being order No. 450, 4th of January, '82, in calling for the delivery of sixty bales to Gilbert H. Green & Co., marked Exhibit C, December 1, '83, and a copy thereof, marked Exhibit D, December 1, 1883.

G. E. PITCHER.

Sworn to and subscribed before me this 6th day of December, 1883.

MARK BREEDEN, JR.,
Notary Public.

236 W. E. KIRK, being duly sworn by Mark Breeden, Jr.,
notary public, to speak the truth, the whole truth, and nothing but the truth in the matter in controversy, and being examined in chief on behalf of complainants by Mess. J. S. & J. T. WHITAKER, doth depose and say as follows:

Question. Mr. Kirk, what position do you occupy in Penn's press?

Answer. Yard clerk, sir.

Question. How long have you been there as yard clerk?

Answer. I have been there this is the third season.

Question. Were you there during the year 1881?

Answer. Yes, sir.

237 Question. What are your special duties as yard clerk?

Answer. Receiving cotton, sir, from the boats and railroads and delivering it when called for.

Question. Have you any charge of the orders for cottons that are delivered?

Answer. I have charge of them, sir, in checking them off on my book, making out slips for delivering cotton, and then they are turned over to the book-keeper.

Question. Will you be kind enough to turn to your yard book and inform us, or state from memory if you can; if there was an order made for any cotton in favor of Gilbert Green & Co. on the 31st December, 1881, and how much—how many bales?

238 Answer. Yes, sir. I know there was eight hundred and odd bales; I forget the exact amount.

Question. Were there any orders for that cotton except that one order?

Answer. No, sir.

Question. Turn to your book; you have it here.

Answer. At what time was there delivered Gilbert Green & Co. any portion of that order?

Answer. On the 31st December there was a portion of it delivered.

Question. What was it?

Answer. It was one hundred and odd bales, sir. I forget the exact amount. I cannot tell by my book. I check off by the number of the order, sir.

239 Question. What was the number of the order?

Answer. Sale 450.

Question. What was the number of the order?

Answer. The number of the order was 450.

Question. What was the next order given for cotton, and when?

Answer. What was the next order?

Question. Given for cotton, and when, to Gilbert Green & Co.?

Answer. That was all in one order, sale 450.

Question. When was the next cotton delivered, then?

Answer. The next cotton was delivered about between the 8th and 10th January; somewhere along there, as near as I can remember. I don't keep the dates exact in my head.

240 Question. You don't know how many bales were delivered at that time?

Answer. No, sir; I cannot tell; cannot state the exact amount. Somewheres in the neighborhood of five hundred bales, I think. I don't keep those things in my head, you know.

Question. Was that cotton at that time already classed; was it classed already?

Answer. No, sir; cotton is never classed until it is turned out.

Question. Was it weighed at that time?

Answer. It was weighed after it was delivered. Yes, sir; all weighed.

241 Question. Was it weighed at that time and delivered; was there any weights taken of it when it was delivered?

Answer. Yes, sir; when it was delivered the weights were taken. It was all weighed.

Question. Who weighed it?

Answer. Mr. Robert K. Breeden.

Question. You don't know anything about, then, the number of bales that was delivered at the different times?

Answer. No, sir; I didn't take any special notice of the number of bales.

Question. Your yard book does not show?

Answer. My yard book shows only the number of the sale. I check off by the number of the sale.

242 Question. Let me see one of your entries, if you please.

Answer. There is the book, sir (handing it to counsel).

Question. Just turn to one of those entries in regard to this—say, for instance, to the 31st of December, 1881.

Answer. There is some of it (pointing to the book).

Question. Is there anything in this book to show to whom those deliveries—to whom this order was given?

Answer. No, sir.

Question. I thought you knew to whom the order was given.

Answer. It shows on the books of the press—the order book and the black book. The transfer is made from J. L. Harris &

243 Co. to Gilbert H. Green & Co.

Question. What does this show (yard clerk's book)?

Answer. That shows the number of bales that I received, and from what boat, for J. L. Harris & Co.

Question. From what boat was it received?

Answer. From the "Henry Frank."

Question. What I am trying to find out is, have you in your book the date of the order for this cotton?

Answer. I say I don't check by the date of the sale but by the number of the sale; that sale is 450.

Question. We find this sale of 450 entered on your book on page 36*a* on November 16th?

244 Answer. November 16th is the date that the boat arrived on which that cotton was brought.

Question. What is this here?

Answer. That is the sale number.

Question. What sale do you refer to?

Answer. I refer to sale 450, to that we are just speaking of.

Question. By whom was this sale—I want to know by whom this sale was made?

Answer. By J. L. Harris & Co.

Question. To whom?

Answer. To Gilbert H. Green & Co.

Question. That is entered on your book?

Answer. That shows sale 450; that I delivered these bales on sale 450.

Question. This entry was made when?

245 Answer. When I received that order to deliver that cotton.

Question. On the 16th?

Answer. No, sir; not on the 16th; that cotton was received on the 16th.

Question. You say that 450 refers to the sale relative to this cotton marked R. J., C. J., etc.?

Answer. Yes, sir

Question. What does 312 mean (referring to another entry)?

Answer. That denotes the number of the sale that that bale was delivered in.

Question. Then these 312, 348, 309, &c., are different sales—not this sale?

Answer. Yes, sir; by the same boat.

Question. The same boat?

Answer. Yes, sir.

Question. Then the only cotton there that comes under that sale is the cotton marked 450?

246 Answer. Yes, sir.

Question. When are the entries of the number of the sales made?

Answer. When I receive the orders from J. L. Harris & Co.'s office. I get them every morning, and I check off the cotton then to correspond with the number of the sale.

Question. So no date is given here as to when you received that order?

Answer. No, sir.

Question. Can you inform us how such a date can be arrived at?

Answer. The only way that I can arrive at it is by referring back to the order book, the cotton book, to sale 450.

Question. Where again do you find 450 in this book?

247 Answer. Where again do you find it?

Question. Yes.

Answer. You find it right *right* here: Chouteau, Nov. 23rd.

Question. What is the date of this sale?

Answer. What is the date of which sale—that sale 450, sir?

Question. When is that 450 entered there?

Answer. When I received the order.

Question. When do you receive the order?

Answer. Well, if I want to refer back to the date that I receive the order I refer back to sale 450.

Question. This book is kept how—according to what dates?

—. According to the dates that I received the cotton from the levee. It has nothing to do with the orders.

248 Question. You have here the date of the receipt of this cotton?

Answer. Yes, sir.

Question. And also the number of the order on which the sale was made?

Answer. Yes, sir.

Question. Can you by any means—from your book or otherwise—tell at what time the delivery order No. 450 was presented?

Answer. I can by referring back to the order book and the black book of the press.

Question. Where is the order book and the black book of the press?

Answer. Here it is.

Question. Now answer the question.

Answer. December 31, 1881.

Question. Does this cover the whole of the cotton?

249 Answer. That is only a part—a part delivered that date—185 bales.

Question. Why was not the whole of it delivered upon that order at that time?

Answer. Because the parties could not take the whole of it that day.

Question. What do you mean by that?

Answer. I mean by that that they had other cotton and they couldn't take all of that; they had cotton in other presses.

Question. Yes, I see. Was the cotton stored to their account of this?

Answer. Stored to whose account?

Question. The parties that could not take it.

250 Answer. Cotton is never turned over to the parties until there is a regular delivery and the cotton is weighed.

Question. I understand you to say that this order was presented on the 31st of December?

Answer. Yes, sir.

Question. Will you explain why, on the strength of this, the 882 bales were not handed over?

Answer. Because they didn't want to take it all that day. They had other cotton that they had to take that they had bought from other parties.

Question. How is that shown, please?

Answer. How is it shown?

Question. How is that shown, I ask you. Do you remem-

251 ber personally anything connected with this sale No. 450?

Answer. Nothing more than usual, sir.

Question. On what do you — your statement that the reason of their not taking this cotton on this date of this order was because of their crowded warehouses at other presses? What reason do you give for that?

Answer. Crowded warehouses at other places?

Question. Yes; that was the question.

Answer. I say the reason they did not take all the cotton on that day was because they had other cotton that they had bought from other parties that they wanted to take.

Question. How do you know this?

252 Answer. I know it from the information derived from this book. I find that they came in and took part of it one day and got through and took other cotton. That is a common occurrence.

Question. By this paper, sale 450, of December blank, what time do you understand that sale to have been made?

Answer. Well, sir, I never understand those things at all. I very seldom refer back to the date. The first that I ever notice of that it comes in under sale 450, and I deliver the cotton of that sale regardless of the date.

Question. You have no knowledge, then, of this paper (Exhibit A, Dec. 1, '83)—of the time when the sale was made, as how?

253 Do you conclude that the sale was made at all of that cotton?

Answer. I have got no right to conclude anything of the kind, sir. I get an order sent from J. L. Harris & Co.'s office, and all I have to do is to deliver the cotton. I get their order and I deliver the cotton on their order.

Question. Do you know whether there was any sale made of this cotton at all?

Answer. I don't know anything about that. I suppose there was, as I would not have got the order.

Question. Does the order always follow the sale when it is made for the delivery of the cottons?

254 Answer. Well, it has always been so, as far as I know of the business, sir.

Question. Does it follow immediately—the order for cotton—upon a sale being made?

Answer. I always get them right away as soon as they are made out. I get them either that night or early the next morning.

Question. That is the invariable rule, is it?

Answer. Yes, sir.

Cross-examination by Mr. SEMMES:

Question. You have stated that that order—450—was presented at the press on 31st December, 1881.

Answer. Yes, sir; as far as I can remember.

255 Question. You infer that from the entry made on the black book of December 31, '81, in reference to the delivery of 185 bales of cotton made on that date?

Answer. Yes, sir.

Question. Is that black book anything but the evidence of the fact that the cotton was called for and delivered on that day to the broker of the purchaser? It is not evidence of the fact of the date at which the order for its delivery was left at the press?

Answer. No, sir; not at all. I have orders *orders* there sometimes for cottons two or three weeks before the cotton is delivered.

Question. So that the entries on that book, instead of being evidence of the date of the presentation of the order to the press,

256 is of the dates at which the parties receive the cotton on the order?

Answer. That is it, sir.

Question. This first book to which you have referred and which you keep being the yard book?

Answer. Yes, sir.

Question. Is it anything else rather than a register?

Answer. It is a record of the receipts at the press.

Question. A register of the cotton received, the dates of reception?

Answer. Yes, sir.

Question. The marks of the cotton on whose order they are delivered afterwards?

Answer. Yes, sir.

257 Question. The discharging order being indicated by the number set opposite to the bales of cotton t hat is delivered?

Answer. Yes, sir.

Question. That book speaks of nothing else? From it you can infer nothing else?

Answer. No, sir.

Question. So that instead of saying it is an order from J. L. Harris & Co. of such a date you say it was delivered on order 450?

Answer. That is it, sir.

Question. And the facts are there expressed by the number?

Answer. Yes, sir.

258 Question. You don't know when the delivery order is delivered or the sale made, delivered on a transfer to somebody else, or what the transaction is upon which the delivery is made?

Answer. No, sir; know nothing about that, sir.

Question. You know nothing of what transpires in the office on that day on which that order has been given?

Answer. No, sir.

Question. Therefore your testimony means nothing but this, the cotton was received, and the cotton was delivered?

Answer. Yes, sir.

Redirect examination by the Mess. WHITAKER:

Question. Mr. Kirk, let me know from that book when the
259 next delivery of the cotton was made.

Answer. The next delivery was made of cotton under 450, of which you speak—under sale 450, of which you speak. I forget the exact date. I will have to find it, though; here it is, sir: January 9th, '82.

Question. On January 9th, '82?

Answer. Yes, sir.

Question. How many bales were delivered on that day?

Answer. 518.

By Mr. SEMMES:

Question. Those were delivered on order No. 450?

Answer. On order 450.

Question. As well as the 185?

Answer. As well as the 185.

W. E. KIRK.

Sworn to & subscribed before me this 6th day of Dec., 1883.

MARK BREEDEN, Jr.,
Notary Public.

260 C. J. MACMUDA, being duly sworn by Mark Breeden, Jr., notary public, to speak the truth, the whole truth, and nothing but the truth in the matter of controversy, and being examined in chief on the part of complainants by Mess. J. S. & J. T. WHITAKER, doth depose and say as follows:

Question. What is your business?

Answer. I am a book-keeper, sir.

Question. For what?

Answer. For Penn's press.

Question. I find in the order marked Exhibit A the words, "Account of G. H. Green & Co., January 10, '82." Be kind enough to explain what that means.

261 Answer. That simply means that it — for the account of Gilbert H. Green & Co.—that he received the cotton through his broker. It was put there simply as a guide to me in entering up my general book, so as to know where and whose account to place it to and where to enter it.

Question. How do you get that date?

Answer. Well, I suppose that it was in the evening that I did that. Whoever made the transfer on January 9th did not complete the weighing until next day.

I always put it there on the last day when the weighing is through. Sometimes the transfer is made and the shipment is not complete—the weighing—for a day or two for some cause or other;

262 maybe the purchaser calls him down-town, *as* for some other cause. The transfer may be made upon the black and order books. The completion of the weighing may be made after.

It is simply for me to enter it on my book, sir, and not have to refer back to the black book.

I have sometimes twenty or thirty orders to enter up in a day.

Question. Then you passed to the credit of G. H. Green & Co., on 10th January, 1882, at the press this cotton named in this order?

Answer. Such as was in the press, I did, 703 bales. There was 704, less 1 rejected, making 703. That is all that went in Penn's press, although a portion of it may be weighed.

263 Our weigher was through with the weighing before I entered it. I think I can absolutely say it was the 10th, because I am very careful about dates.

Question. So that if there had been a weighing and a partial delivery upon several days you would not make a final entry on your books until the delivery of the last bale?

Answer. No, sir. Then I would make that entry then, because I never enter this on my book until the weigher is through without it being checked.

Question. So that if a party purchased 1,000 bales and presented the delivery order to the press and took, say, on the 1st of

264 January, 100 bales; on the 5th, 100, on the 10th, 100, and so on,

you would not until he had received all the cotton carry it on the books of the press to his account?

Answer. No, sir; I would not split my entry.

C. J. MACMURDO.

Sworn to and subscribed before me this 6th day of December' 1883.

MARK BREEDEN, JR.,
Notary Public.

GEORGE E. PITCHER, recalled for complainants, examined in chief by Mess. J. S. and J. T. WHITAKER as follows:

Question. Mr. Pitcher, have you any information in regard
265 to the 179 bales which you stated had been stored in Terrell's press?

Answer. I would like to look at that order before I answer (Exhibit A). This order shows sale 450 by a memorandum at the bottoms; 703 bales was delivered at Penn's press, and shipment, I think, shows for that in the order book; 179 at the bottom of this memorandum is marked at Terrell's. I have an order in my pocket for that—for the 179 bales, which is a portion of this 450. I have not compared those marks, Judge, I have to say, with this order. I presume they correspond. That makes 179, and I think you have an order for 60 there from Terrell's; 179
266 & 60 would be 239 bales at Terrell's. J. L. Harris' transaction with Terrell's was through Penn's press. We did this business; Terrell's press did not. As I stated previously, we had transferred to Terrell's press, on account of being crowded at our press, over 2,000 bales of cotton, of which was these two particular lots, 179 & 60, making 239. Consequently Terrell has to account for the 179 which we put in his press, the two orders you have there. Penn's press have to account for the 703 bales, which they have done by their shipping order. There is the identification of these entries that I am going to read with this order. Terrell's press: Compress and send to ship "Mellmerby" for Liverpool—

G R E	5	bales.
E N S	55	bales.
T E W	60	bales.
267 A R T	42	bales.
C O	37	bales.
L J V	24	bales.
P U L	14	"
	237	bales.

Now, to identify this shipping order, January 5, '82—to identify this shipping order with the transfer to Gilbert Green's representa-

tive, signed O. Mazzerat in the black book, I find from J. L. Harris & Co. to Gilbert Green & Co.—

G R E	5	bales of	cotton.
E N S	55	"	"
T E W	60	"	"
A R T	42	"	"
C O	37		
L J V	24		
P U L	14		
Making	237	bales of	cotton.

In the margin of this order in the black book, in pencil, I find one bale marked "dusty, Point Chicot," short, by boat, G R for
268 G K, one bale, making two bales, which would account for the 239 bales in Terrell's press.

By Mr. SEMMES:

Question. What is the date of that entry in the black book?
Answer. January 5th.

By Mess. WHITTAKER:

Question. Will you be kind enough to inform me who the pencil writing is by? It seems to be a different handwriting from the other.

Answer. I cannot tell, sir; I presume by some of the yard clerks at Terrell's press.

Question. There is produced in evidence by the witness an order on Terrell's press, which is marked Exhibit B, December 1, '83, as an order for cotton—179 bales, I think.

269 Answer. That is the way it read, I beleive.

Question. That is offered in evidence (Exhibit B, Dec. 1, '83).

By Mr. SEMMES:

Question. This paper—Exhibit B, December 1, 1883—was produced, on call of complainants' counsel, by the witness, G. E. Pitcher. Will you please look at this order and state in whose handwriting it is? I find that it is signed J. L. Harris & Co., by Breeden. In whose handwriting is that?

Answer. That is in the handwriting of a party by the name of Breeden. He was the weigher for J. L. Harris & Co. at that time.

Question. Why should Mr. Breeden sign this order?

270 Answer. Well, I can only state from a surmise. Give me that order and I will show you. As I stated before, these cottons coming into our press, naturally the party supposed J. L. Harris' cotton to be in Penn's press, supposing that they sent the order there for the cotton.

Question. On Penn's press?

Answer. Yes, sir; for the 882 bales. When they called for this

cotton, I presume, the weigher, finding the cotton not there and knowing it had gone up to Terrell's press, in order to save time, possibly, I think—that is, the only way he could do it was to take that portion of this order which was not in Penn's press and give an order himself on Terrell's press for it. Penn's press might have given such an order. I would have felt justified in writing
271 this order myself, because J. L. Harris & Co. knew Penn's press in the transaction, and not Terrell's press, as the storing party.

Question. Is Breeden living or dead?

Answer. He is dead, I beleive.

Question. You know this to be in his handwriting?

Answer. Yes, sir; to the best of my recollection that is his handwriting.

Question. I see this dated 29th December, 1881, No. 450. Is "New Orleans, December 29, '81," in his handwriting?

Answer. Yes, sir; that is the same handwriting, evidently.

Question. The weigher is stationed at the press, is he not, altogether?

Answer. Yes, sir.

272 Question. He could not have given this order December 29, 1881, unless he at the press had received this order (Exhibit A)?

Answer. Not well; no, sir; not well, because the weigher has no access to the yard clerk's book. He possibly at the time did not know that this cotton was at Terrell's press until the parties called for it and the yard clerk informed him it was there.

Question. So that Harris & Co. gave the order for the total amount on Penn's press, supposing it was all there, and not knowing it was transferred to anybody else?

Answer. Yes, sir.

By Mess. WHITTAKER:

273 Question. Do you not know that J. L. Harris & Co. were not aware that this cotton was not, all of it, at Penn's press?

Answer. I only know from this fact, that when I found my press crowded I informed J. L. Harris & Co. that I would be compelled to store some of their cotton outside.

Question. Then they did know the fact that part of it was stored outside?

Answer. No, sir; they did not know the fact, and I will explain why. Of 2,000 bales of cotton 179 is a very small part of it. They did not know whether this 179 was comprised in that two or three thousand bales or not, and it was only from time to time in the busy season that we could inform them that such and such
274 cottons was in the press that they did know it.

Question. Is not that a conclusion that you draw rather than a fact?

Answer. No, sir; I am speaking under testimony. I know it from fact.

Question. Is it not a conclusion that you draw in regard to their not knowing the fact?

Answer. I am speaking so far as any knowledge came from the press, any information that we gave them.

We could not tell from time to time what we would store in that press, and I will explain why. If it was in this interval when we were storing these cottons outside and we would be crowded
275 so as not to take shipments, that shipment would have to go up to Terrell's press.

By Mr. SEMMES:

Question. What book is that you refer to where the delivery was made on the order signed by Breeden for 179 bales, signed by Harris & Co., by Breeden?

Answer. That is Terrell's black book.

Question. That covers the ground.

It is agreed by counsel that a copy of the exhibit herein referred to as Exhibit B, Dec. 1, '83, which is the order on Terrell's press for 179 bales, shall be annexed to Mr. Pitcher's testimony as a substitute for the original, the said copy to be certified to by the notary taking these depositions.

G. E. PITCHER.

Sworn to & subscribed before me this 6th day of Dec., 1883.

MARK BREEDEN, JR.,
Notary Public.

276 A. B. CAMMACK, being duly sworn by Mark Breeden, Jr., notary public, to speak the truth, the whole truth, and nothing but the truth in the matter in controversy, and being examined in chief on the part of Mess. J. L. Harris & Co. by Mr. T. J. SEMMES, deposeth and saith as follows:

Question. Mr. Cammack, you are a cotton broker and have been for how many years in this city?

Answer. Since 1847.

Question. So that you have a very extensive experience in
277 the purchase and sale of cotton in this market as a broker?

Answer. I have, sir.

Question. Is it anything unusual, Mr. Cammack, in making a sale of cotton when there is a lot for sale and part of it has not arrived to sell that which is on the table together with the lot that is to arrive on a guarantee that the cotton to arrive shall be equal to that on the table?

Answer. That is very often done. I have done it very often myself and I know that other brokers have done it. It is a very usual thing, especially with Mr. Harris.

Question. Why especially with him?

278 Answer. Because he has similar cotton very often that he wants to sell to close out accounts, or something of that sort, and he frequently asks the question, "I have so many bales of cotton of such a lot that I would like to put in at the same price, provided

you find it is equal to the lot sold," and I very often have said to put it in and my classer will decide on such—whether he will take it in or not. That often has occurred with me with this very house.

Question. Is it not very often the most judicious mode of selling cotton?

Answer. Well, sir, factors find it to their interest to do it, especially when they want to get on with their sales. As I have
279 stated, when they want to close out accounts or something of that sort.

Question. Where there is a large amount on hand and but a small amount to arrive is it not very often to the interest of the consigner that it should be all sold together?

Answer. Factors consider it so, sir. That is the reason they want to make one transaction of it. It is a very common occurrence in some factor's offices.

Cross-examination by the Mess. WHITTAKER:

Question. When cotton is to arrive how is the sale concluded between the seller and the purchaser? What constitutes the
280 sale of the cotton which is to arrive, or what is the agreement in regard to the order that is to be given for the cotton?

Answer. Well, it is usually included in the order given upon the press. The understanding is that it is to be taken in on the same terms that the main lot has been purchased at.

Question. Is there any sale ever made in New Orleans without an order given to the press for the cotton?

Answer. That I do not know. I am telling you the usual mode is to give an order upon the press for the cotton.

Question. Is the sale concluded until that order is given?
281 Answer. The sale? The delivery is concluded when it passes the scales.

Question. Then the sale is not complete until it passes the scales?

Answer. The delivery is not complete. The contract is made at the time of purchase, and they are usually verbal contracts.

Question. Supposing that you should sell to a man on a mere verbal agreement a certain lot of cotton and you fail to give him an order at the time for the cotton after it was completed, would it be out of your power to dispose of that cotton to anybody else?

Answer. I could not get possession of it without an order.
282 I could not deliver the cotton to anybody else without first having an order for it from the original seller.

Question. In other words, is it not necessary to the completion of the sale that there should be an order given for the cotton in the custom of merchants?

Answer. An order is issued for the amount of cotton on the tables, and *and* when these little lots are to be included, provided it corresponds with the original purchase, a subsequent order can be given, and usually is.

Question. Yes. Then I understand you to say that an order is given at the time when the purchase is made?

283 Answer. Well, it is as soon as they can get through with

the business and the clerks make out the order. The marks are so numerous now that it takes some time. Sometimes it is impossible to get through with the delivery order in one day.

Question. How many days is generally allowed for it?

Answer. It is usually given the next day; that day or the next.

Question. Did you ever know of a continuation of orders for the sale of cotton running through a period of ten or fifteen days?

Answer. I have bought cotton—I remember one instance—
284 from Lehman, Abraham & Co., of four or five hundred bales, and only part of it was here. The balance did not get here for a week, but it was delivered to me when it came. The order was given when the cotton arrived.

Question. When the cotton arrived?

Answer. Yes, sir.

Question. But supposing the cotton that you had bought of Lehman, Abraham & Co. had all been here at the time, would you have required an order for that cotton?

Answer. I should not have asked for it, as we are not particular about wanting it immediately; that is a matter of agreement between merchants. There is a certain degree of confidence
285 between them that justify the delay without asking for it. It is not necessary.

Redirect examination by Mr. SEMMES:

Question. Mr. Cammack, the purchase and sale of cotton which takes place in this market is usually through brokers?

Answer. Through brokers, generally; there are instances where the parties buy themselves.

Question. The sales are conducted how? There is no written agreement?

Answer. I have never known of a written contract for years.

Question. After the terms are agreed on in the office of the
286 factor there is always a delay of some sort arising before you can get the delivery order, for the reason that you have assigned, of the various prices and marks, brands, and so on, which takes time to make them out?

Answer. Yes, sir.

Question. Is it anything unusual to give a separate delivery order?

Answer. Not at all; especially so when the cotton is not all in part—all on the tables. This thing is of so common occurrence that I supposed everybody was familiar with it.

Question. Have you not actually in transaction with J. L. Harris & Co. or any other factor received different orders upon differ-
287 ent presses for lots, say 400 bales?

Answer. Often.

Question. At different times. That arises from various causes. Sometimes the cotton arrives here and is assigned by the boat through mistake to the wrong factor. The factor receiving it stores it in his press, and it is not the same press that the proper factor of the cottons stores it in, and then it requires an order upon two

presses. Then the speculation cotton that is purchased here is in various and sundry presses, then put upon the factor's table for sale and resale, and it requires a number of—as many orders as there are presses that the cotton was stored in.

288 Answer. We all understand that.

Question. Is it not a very common thing here when a presss is full for cotton to be stored in a different press other than the usual press of the factor?

Answer. It is sometimes. I remember an instance when Wright, Williams & Co. had to buy a whole lot of drays and mules to haul their cotton off the levee and haul it to an entirely different press from their own.

A. B. CAMMACK.

Sworn to and subscribed before me this 6th day of December, 1883.

MARK BREEDEN, JR.,
Notary Public.

289 NEW ORLEANS, LA., *Dec. 1st*, 1883.

The taking of depositions in this case was here closed for the day, and by agreement of counsel the further taking of depositions in this case was postponed until Monday, December 3rd, 1883, 10 a. m., at the same place.

MARK BREEDEN, JR.,
Notary Public.

NEW ORLEANS, LA., *Dec. 3rd*, 1883.

Pursuant to the above adjournment the taking of depositions in this case was resumed at the hour and place mentioned.

Present on behalf of plaintiff-, Mess. J. S. & J. T. Whitaker; present on behalf of defendants, Mess. Semmes & Payne.

Witnesses for defendants, John M. Parker & Norman Eustis.

MARK BREEDEN, JR.
Notary Public.

290 JOHN M. PARKER, being duly sworn by Mark Breeden, Jr., notary public, to speak the truth, the whole truth, and nothing but the truth in the matter of controversy, and being examined on the part of Mess. J. L. Harris & Co. by Mr. T. J. SEMMES, deposeth and saith as follows:

Question. Mr. Parker, I perceive that one of these documents marked on the back "C" purports to be the original, and "D" purports to be a copy of it. I notice the original appears to be dated 4th of January, 1881, and the copy 4th of Jan., 1882. Can you tell me when the original was made? What was the real date of the original—whether that 1881 is an error or not?

291 Answer. Well, sir, I know that sale #450 to Gilbert Green & Co. was made on the 28th of December, 1881. It cannot be possibly anything but 1882.

Question. But 1882?

Answer. No, sir.

Question. I notice the marks C. J. 7 in pencil on the original, the remark "one short by boat." No comment of this sort is made on the copy. Why was that comment omitted on the copy furnished?

Answer. Well, I presume that subsequently the boat found the cotton and delivered it to us.

Question. This original *in* the original order given on the press to Gilbert Green & Co.?

Answer. Yes, sir.

292 Question. I notice that there is a difference between the original and the copy as to one bale of cotton marked Point Chicot [J. O.] on the original; on the copy [S. O.].

Answer. I presume that to be a clerical error.

Question. Mr. Parker, I have been informed that a letter has been offered in evidence in the case by the complainants purporting to be written by you on 10th of January, 1882, of which this is a copy. (Hands the letter to witness.)

Answer. Yes, sir; I wrote it.

Question. You wrote such a letter?

Answer. Yes, sir.

293 Question. Was Mr. Bryan here at the time you closed out the future cottons?

Answer. No, sir; I think not, as I would not have written such a letter.

Question. You say in this letter you closed out owing to the garnishment of Judge Wittaker; what do you mean by that?

(Objected to by Judge Whitaker.)

I waive that. I will put it in another way—the same thing. What was your object in closing out the future cottons—to avoid Judge Whittaker's garnishment?

Answer. It was in order to be able to answer his garnishment; to determine the actual status of the account.

Question. What do you mean in order to be able to answer his garnishment?

294 Answer. Well, sir, there was a profit in the futures. We could not answer positively what amount, what we were required to answer, as we were supposed to do under that garnishment, and we were advised to that course by our attorneys.

Question. What do you mean by that, Mr. Parker; what do you mean? After all you have said, what do you mean by that?

Answer. Well, sir, I mean that I supposed we were to answer exactly what the status of his account was, and in order to do that we must determine whether there was a profit or loss in the future transactions.

295 Question. When the futures were sold out the status of the account was ascertained and you did answer—your firm did answer?

Answer. Yes, sir; I think so, sir. I did not make the answer personally, but my firm did answer.

Question. Did the accounts how anything to the credit of—did the total account show anything to the credit of—any balance in favor of Bryan?

Answer. The total future account?

Question. No; after you carried this credit—the profit of these futures—to his account, — his general account show any balance to his favor?

Answer. No, sir.

296 (The last answer objected to by Judge Whittaker because it appears that this final settlement of the balance was made subsequent to the answers of garnishment—subsequent to the answers to the garnishment or seizure made in the hands of the garnisheer.)

Question. I offer in evidence the letter marked E, December 3rd, 1883. Were you in New Orleans when this cotton was sold to Gilbert H. Green & Co.?

Answer. I think I was, sir. I know I was. Yes, sir.

Question. You know you were?

Answer. Yes, sir.

Question. Was Bryan—L. C. Bryan—here at the time that cotton was sold?

297 Answer. Yes, sir.

Question. Do you know whether or not he was consulted about it?

Answer. Well, I was not in the cotton-room. I was not present.

Question. You were not present when it was sold?

Answer. No, sir. I know that he knew about it after the sale because he told me so.

Question. How long after the sale?

Answer. Either the same day or the next; I am not certain which.

Question. Did he make any objections to it?

Answer. Not at all.

298 Cross-examination by Mess. J. S. and J. T. WHITTAKER:

Question. When did Mr. Bryan arrive in New Orleans at that time? What day did he arrive here?

Answer. I have no means of ascertaining the exact day of his arrival here. I think—I think that it was the 25th or 26th of December.

Question. What time did he leave here?

Answer. It was either the evening of the 5th or 6th of January. I have no means of being positive.

Question. Is Mr. Bryan living or dead?

Answer. He is dead, sir.

299 Question. Do you know when he died? What time did he die?

Answer. I think it was the 16th January, 1882.

By Mr. SEMMES:

Question. What, if any control, if any, had you over the matter of selling those two thousand bales of future cottons?

(Objected to by the Mess. Whittaker as to the issues in this case.)

Question. I want to find out what instructions were given, if any—whether you were limited in your instructions or not, in your dealings with those 2,000 bales of cotton?

(The entire question objected to by the Mess. Whittaker as irrevalent.)

300 Answer. The disposal of the cotton was left to our discretion.

Question. What do you mean by future cottons?

Answer. Well, I mean contract for future delivery.

Question. Contract for future delivery?

Answer. Yes, sir.

By Mess. WHITTAKER:

Question. Have you anything in writing to show that the disposal of the cotton was left to your discretion?

Answer. That I cannot answer now.

By Mr SEMMES:

Question. What Mr. Whittaker means in writing is have you any letter or written instruction in regard to these futures?

301 Answer. Sir?

Question. What Mr. Whittaker means by writing is, if you cannot understand it, have you any letter of instruction, or, if not in the form of a letter, any written power to dispose, at discretion, of those 2,000 bales of future cottons?

Answer. Not anticipating such a question I have not prepared myself to answer it.

Question. Have you now any remembrance of any such document?

Answer. No, sir; not in writing.

Question. Was Bryan here when you purchased the 2,000 futures—this cotton?

(Objected to by the Mess. Whittaker as irreverant.)

302 Answer. He was here when we purchased a portion of that, sir. Part of that lot may have been purchased after he left.

Question. I ask you, Mr. Parker, when you go home go to the office to look and see if there is any written document eminating from Bryan with reference to your control over these two thousand bales; and, if so, to send it to the stenographer to be annexed to the testimony.

Answer. Yes, sir; I will do so.

Question. I show you now, Mr. Parker, a book styled "Blotter No. 6," of your firm, under date of December, 1881, page 132. Just

read the entry there. I will read it to you and then you can
303 explain it. In the first column, in the first line, are the figures 450; in the second is 28; in the third, following that—it is on the same line—first, 450; then the figures 28, then 942 b. c.; invoice 422 b. c., 11¼, on the same line; January 7th, 20,592.33, on same line. Now, on the second line of the same entry to G. H. Green & Co., invoice 518, January 10th, 24,892.99. Then I see, just above the first line, 940 bales taken, Nos. —. What does this entry which I have just read signify? First, 450?

(Objected to by the Mess. Whittaker. The record speaks for itself and is in writing and needs no explanation of the witness; is therefore objected to.)

304 Question. What do the figures 450 signify?

Answer. That is the number of the sale.

Question. The number of the sale? What do the figures 28 —?

Answer. The day of the month.

Question. The 28th of December, 1881?

Answer. Yes, sir.

Question. 942 bales of cotton?

Answer. That is the quantity of cotton sold.

Question. 940 taken. What is the meaning of 940 bales taken?

Answer. That there was two rejections.

305 Question. That two of the bales sold were rejected?

Answer. Yes, sir.

Question. Invoice 422 bales of cotton, 11¼. What does 422 mean?

Answer. That much on one order, I suppose. You see there are two orders, or rather there were two lists; 422 means part of 942 bales of cotton sold at 11¼ January 7th.

Question. What year would that be?

Answer. January 7th, 1882.

Question. The payment of those 422 was 20,592.33?

Answer. Yes, sir.

Question. To G. H. Green & Co.; what does that signify?

Answer. The purchasers.

306 Question. The purchasers? Invoice 518 is the invoice of the residue of the cotton?

Answer. Yes, sir.

Question. January 10th—what year?

Answer. 1882.

Question. 24,892.99—that is the price of that invoice, *is the the price of that invoice?*

Answer. Well, it was sold in bulk and there were payments made on account.

Question. The two entries together constitute the complete price of the cotton, does it?

Answer. I presume so from that; but Mr. Eustis will be here directly; he made that entry, and he can tell you exactly
307 what it is. I would rather that he explain that, because I am not really very conversant with these books.

Question. What book is this blotter?

Answer. It is the entry of the daily transactions as *as* they occur.

By the Mess. WHITTAKER:

Question. You have no other book called the blotter, of your own, in which these entries are also given?

Answer. No, sir; I think not.

Question. You don't know the fact, or do you know it?

Answer. I never saw any other in the office.

308 Question. You never saw any other in the office?

Answer. No; called the blotter.

Question. What is the time of these entries that you have testified to there? Were those entries made at one time or at different times?

Answer. Oh, no; it appears that entry of the sale of that 422 bales of cotton was made on the 28th of December, and that these payments were made, respectively, on the 7th & 10th of January, December, '81, and January, '82.

Question. Is the writing in that entry all made in the same hand?

Answer. I think not, sir; it should not be.

Question. How many handwritings have you there in that

309 entry, and who made them in your employ?

Answer. We have two there, sir; that is all I make out. Joe Doane wrote that and Eustis this.

Question. Which portion was made by Mr. Doane and which by Mr. Eustis?

Answer. Do you wish me to go over it?

Question. Yes, sir; I wish you to tell which of the entries were made by Mr. Doane and which by Mr. Eustis.

Answer. 942 b. c., 940 bales taken. Invoice 422 b. c., 11¼ (I don't remember who wrote January); to G. H. Green & Co., invoice

518. All that is written by Norman Eustis. "Charged in ac-

310 count," which occurs twice, and entries of the amounts — dates 7th and 10th of January (the January part I am not certain about), then the amounts, 20,592.33, 24,892.99, are in the handwriting of J. S. Doane.

Question. I notice in this entry two separate invoices.

Answer. I cannot answer anything about the invoices. Mr. Eustis will explain that.

Question. You did not yourself write in this book?

Answer. No, sir.

Question. I notice that the cotton, according to the testimony of one of the witnesses, was sold for ⅛ above the market price. Is that the fact?

311 Answer. I never have anything to do with the cotton-room, sir. I don't know.

Question. I note that there are many entries in this book of sales during the month of December, say from the 27th to the 30th, inclusive, and I desire that the stenographer make a list of the entries during those dates from the blotter. I want it on pages 131, 132,

and 133, a certificate of the notary being sufficient to authenticate or identify it.

(Mr. Semmes makes no objection.)

After this cotton was sold to G. H. Green & Co. do you know what became of it after? I mean——

Answer. No, sir.

312 Question. Have you any knowledge of the final disposition of this cotton?

Answer. I presume it was shipped.

Question. It was shipped?

Answer. Their cotton is generally shipped. They are large purchasers, and they generally ship their cotton.

Question. Is *their* nothing on your books to show any after entries growing out of those same sales?

Answer. Not that I am aware of, sir. Well, I have not looked at the books.

By Mr. SEMMES:

Question. It seems there is some question about 7 bales of cotton in the testimony taken above that was sent here, said to have
313 been received on the 6th of January, 1882. Will you please state whether you received any cotton of L. C. Bryan & Brother after the arrival of the sixty bales, which were taken to make up the lot, sold to G. H. Green & Co.—any other cotton; and if so, how many bales, and state the marks, and look at that bill of lading for the purpose of refreshing your memory?

Answer. Our books don't show that we have received any cotton for account of the estate of Walter Sessions about the date mentioned. We did receive 7 bales of cotton—four marked L. C. B. C. K., three L. C. B. plain—for account of L. C. Bryan and Brother, which we sold and placed to their credit in account.

314 By the Mess. WHITTAKER:

Question. What time was the seven bales of cotton that you have referred to received by your house?

Answer. Received on Jan. 6th, 1882.

Question. Mr. Parker, after the receipt of these seven bales what other cotton came to you for L. C. Bryan & Brother that year?

Answer. I cannot answer now; I cannot answer here.

Question. I mean during the month—during the season.

Answer. I cannot answer that now without looking through the books.

Since giving these depositions I have been too sick to look
315 for the written power, if any existed, of Bryan referred to, and I sign these depositions in bed.

JOHN M. PARKER.

Sworn to and subscribed before me this 6th day of December, 1883.

MARK BREEDEN, JR.,
Notary Public.

NORMAN EUSTIS, being duly sworn by Mark Breeden, Jr., notary public, to speak the truth, the whole truth, and nothing but the truth in the matter in controversy, and being examined in chief on behalf of Mess. J. L. Harris & Co. by Mr. SEMMES, doth depose and say as follows:

Question. You are in the employ of J. L. Harris & Co. and have been for how long a time?

Answer. Since 1873.

316 Question. The entry in blotter No. 6, page 132, has been spoken of and testified to by Mr. Parker. Who keeps this book?

Answer. I do—that is, if you refer to the cotton portion of it. The sales of molasses and sugar are entered up by whoever sells at that time.

Question. You keep the book with reference to the cotton?

Answer. So far as the cotton is concerned—nothing else. This is simply to enter sales of cotton as they are made each day.

Question. This is the book in which the sales are entered made each day?

Answer. Yes, sir; each day.

317 Question. In whose handwriting is this entry here, commencing with the number 450, with the figures 450?

Answer. The entry 450, the date, number of bales——

Question. What part of this entry means the date?

Answer. That 28.

Question. Well, now?

Answer. The number of bales 942, price 11¼, to G. H. Green & Co., is all mine.

Question. All yours?

Answer. Yes, sir.

Question. Well, now, in whose handwriting are the following entries: Invoice, 422 bales of cotton?

Answer. That, I don't know whose handwriting it is, but

318 it is the duty of the abstract clerk to make it.

Question. It is the duty of the abstract clerk?

Answer. Yes, sir.

Question. Invoice 518, whose handwriting is that?

Answer. That is the same as the other apparently; part, too, of the other.

Question. Who was that?

Answer. I think it is Sam. Merwin. I recognize the writing as Merwin's.

Question. Whose handwriting is the 940 bales in?

Answer. It is the same handwriting, the duty of the same party.

Question. Whose writing in pencil; are these pencil marks; is that pencil or ink?

Answer. In ink, sir.

319 Question. Whose writing are the words, twice mentioned, "charged in account?"

Answer. That looks like our cashier's writing.

Question. In whose handwriting is January 7th & Jan. 10th?

Answer. That is the writing of Mr. Merwin—the same as the other—I think.

Question. In whose writing are the two entries of the price?

Answer. The price, do you mean, or the payment?

Question. Is that the payment?

Answer. Yes, sir.

Question. In whose handwriting are the entries 20,592.33 and 24,892.99?

320 Answer. That is Mr. Merwin's, I think. I cannot be positive as to the writing, but I think it is all the same.

Question. Those sums indicate that?

Answer. It should indicate the net amount of the invoice as returned by the buyer.

Question. Do you know anything about the sale of this cotton—this 942 bales?

Answer. Nothing, except that it was sold in the usual way.

Question. Do you know anything about the price?

Answer. 11¼ is my entry, the price.

321 Question. Do you know whether at that time that was a fair price for the cotton?

Answer. Well, I think it was a little over, if I recollect distinctly—a little outside price, as we call it—very outside.

Question. Is this gentleman in whose handwriting the balance of these entries is (when I use the term balance I mean those not written by yourself) still in the employ of Mr. Harris?

Answer. Mr. Merwin is not, sir; he is doing the draying of the concern; no longer in the office.

Question. Did you make these entries, at the time they were made by you, at the time and on the dates that they appear to be made?

Answer. Yes, sir.

322 Cross-examination by the Mess. WHITTAKER:

Question. Have you any other book excepting this that you call the blotter?

Answer. No, sir.

Question. In which these entries are made?

Answer. No, sir; excepting we have those that follow; 5 precedes—this is for the previous year—and 7 follows after this last year, I believe.

Question. Is there any other book in which these entries are made in your office?

Answer. No, sir; that is the only one; that is just to keep me straight with the buyers, you know, as to price and number of bales.

323 Question. Where is Mr. Merwin to be found?

Answer. On the levee, I expect, sir.

Question. Is he in your employ as a drayman?

Answer. He does the hauling to the press; he is really in the employ of the press, you know.

Question. How are you informed that sales are made, Mr. Eustis?

Answer. What do you mean?

Question. In making up the entry, such as the one you made in this blotter, what notification do you receive in order to post your entry?

Answer. Well, you understand that Mr. Harris sells cotton,
324 and I sell. If he sells—well, he tells me, and if I sell I know it. If I am not in the room he sells.

Question. Yes.

Answer. I am the assistant salesman, you know, as well as classer of the house, and it is Mr. Harris' duty, in order to keep that book straight, to tell me of the sales he makes in my absence.

Question. Was this sale made by him or by you?

Answer. By Mr. Harris.

Question. This notification of sale is made in writing, or is it made verbally?

Answer. You mean to me?

Question. Yes.

Answer. Always verbally.

325 Question. You put it down in your book after it is made to you?

Answer. Yes, sir.

Question. The verbal statement is made to you?

Answer. Yes, sir.

Question. Then your business is simply to make the remark in your book that a certain amount of cotton has been sold by your house for a certain price to a certain party?

Answer. Yes, sir.

Question. I notice there are two invoices of this cotton in this entry—how did there come to be two invoices made if there was only one sale?

326 Answer. Well, there may have been two deliveries of it; we don't always make a complete delivery of one lot.

Question. Will you be kind enough to state and tell us when the delivery was made of those cottons?

Answer. This book don't show. It is not necessary to show it. It only shows the date of the sale, the date of the payment, the dates of the final invoice.

Question. When are the payments made in your cotton business?

Answer. Well, I don't understand.

Question. What time are payments made of cotton purchased? Is it before or after delivery generally?

327 Answer. Well, we sometimes get money on account.

Question. After you sell are cottons delivered at that time when those moneys are paid?

Answer. You must know, Mr. Whittaker, I am not familiar with the cash part of the business. My business is in the cotton-room and I don't know whether the invoices are advanced or paid. Now,

if these are full invoice amounts they should be charged up or a certain portion of the invoices are charged up as they are made. After the invoice is made then it is entered up—that is the way, you understand. So far as my knowledge extends, it does not go to these figures. It does not go beyond the sale of the cotton and the
328 price and to whom sold; then it passes out of my hand.

Question. When you make a sale of cotton how do you contract for the price of that cotton—for the payment of the price of that cotton? Is it to be paid on delivery sales of cotton ordinarily?

Answer. Well, I never mention it; it is understood. There is a regular course taken. Cotton is generally considered delivered when it passes the scales.

Question. After it is weighed, then?

Answer. Yes, sir.

Question. Is that the way you account for these sales or these prices in that entry being at that time? That must have been the date of the delivery of that cotton?

329 Answer. These invoice amounts here?

Question. Yes.

Answer. No, sir; not necessarily account for that; that would depend a great deal whether that young man was up in his mark or not—the abstract clerk.

Question. Did you class this cotton?

Answer. Yes, sir.

Question. What time did you class this cotton?

Answer. About the time of the sale. It is too long ago for me to tell the time exactly, but cotton don't stay very long on our tables. We are prompt sellers.

Question. Did you class all this cotton on the 28th?

330 Answer. I think there was a lot of sixty bales that came in afterwards.

Question. You classed that afterwards?

Answer. Yes, sir.

Question. After the purchase was made did you take occasion to compare the parcels—I should say samples—with the cotton at the press? Did you take occasion to compare this afterwards?

Answer. I don't think any such occasion arises. We sell cotton of a class, and unless it comes up in some controversy that we shall compare it we very seldom compare it.

Question. Was all this cotton of the same class?

Answer. An average lot. We very seldom have nine hun-
331 dred bales of the same class—the whole 900. Some will be better and some lower. We make an average; that is the way we class any lot of cotton.

Question. In your business or in the business of your house is a sale generally considered complete before delivery?

Answer. A sale, sir, is binding although the delivery has not taken place.

Question. It is binding?

Answer. In other words, a verbal offer and an acceptance of a lot

of cotton at a given price holds—binds—both parties to the transaction, but the delivery is another thing altogether.

Question. In a case like this, supposing a sale was made of
332 cotton, of a large amount of cotton, on a certain day, by your house, as by any cotton-house, and there was a lien on that cotton ahead of yours or anybody else, could that cotton, in your opinion, be seized in the interval before delivery?

(Mr. Semmes objects to the witness answering the question on the ground that it is a purely legal question.)

Answer. I never studied law and I cannot answer a question of that sort. I wanted to study law, but I didn't.

Question. I put it in another form. In your knowledge of cotton transactions here is it not a common thing for seizures to be made between a sale made by any house—any cotton-house—and the delivery of cotton on a lien?

333 Answer. Never knew of one.

Question. You never knew of one?

Answer. No, sir.

Redirect examination by Mr. SEMMES:

Question. Is it not customary in the sales of cotton for the factor to require any advance on the cotton before the cotton is weighed?

Answer. Well, frequently it is, sir, particularly if the house has any doubts of the parties paying it; it is the custom here to do it.

Question. Or if the house is in need of money?

Answer. Yes, sir; when it does it quicker.

334 Question. It depends upon the necessities of the occasion?

Answer. Of the occasion; yes, sir. On large lots of cotton very frequently we make large sales for that purpose.

Question. Well, I notice that these entries, 20,592.33 and 24,892.99, are necessarily, from their character, positive entries, else the figures would not vary as they do, I presume. They are not made by you?

Answer. No, sir.

Question. From what source would those aggregate figures be derived?

Answer. You mean the item here?

Question. Yes.

Answer. It is the duty of the broker to make those re-
335 turns, but, the broker being frequently dispensed with, frequently the buyers make them themselves.

Question. Well, from what cause are they made? How are they made? What is the data?

Answer. Well, from the weights of the cotton; the weights of the cotton calculated by the price of the sale should produce those figures.

Question. Exactly. So that is the ultimate entry—that transaction is completely closed?

Answer. Yes, sir; that closed up this book.

Question. You say that these entries were made by you in regard

to the number of the sale order, the date, and the number of
336 the bales of cotton, and the person to whom sold?

Answer. Yes, sir.

Question. You have already stated that some are made from your personal knowledge, because you make the sales?

Answer. Yes, sir.

Question. And others are made from representations made to you of the sale by Mr. Harris?

Answer. Yes, sir; or Mr. Parker.

Question. Or Mr. Parker, as the case may be?

Answer. Yes, sir; whoever makes the sale it is their duty to report to me.

Question. What is the custom, the habit, in the office as to
337 the time that the sale is reported and the time of making the entry of the sale which is reported to you when you do not make the sale yourself?

Answer. I make the entry on the day of the sale in here.

Question. What time, when it would be reported to you, would you make the entry?

Answer. I should make them out the same day.

Question. What time are they reported to you?

Answer. That depends entirely when they are made; they should be reported before I go to dinner.

Question. The question I want to find out is, are the sales reported to you immediately when made, or how long after;
338 and, if so, at what time and when would you make the entry?

Answer. They are usually made as soon as I am seen after the transaction. That is the custom.

Question. They are reported to you as soon as you are seen after the transaction?

Answer. Yes, sir, and I fill that out. The charge is made the very day, just as soon as I enter the front office, and frequently I make an examination of the book after I am through, and I sometimes sell at 5 o'clock in the evening. The other day I sold a lot at 10 o'clock at night.

Question. Then the entries in this book are made by you
339 at the time of the sale—the day of the sale?

Answer. Yes, sir; that is the rule.

Recross-examination by the Mess. WHITTAKER:

Question. Can you state positively that entry in this book was made by you on the day it bears date?

Answer. I think I can, and I tell you why: I see here more sales. I see here a sale on the 27th and a sale on the 29th following that—a sale on the 27th here preceding and a sale on the 29th; then comes the 28th and then the 29th.

Question. You can only assert it to the best of your knowledge and belief?

Answer. To the best of my knowledge and belief, because

340 it is too long ago for me to do otherwise. I know these things are made the day the sale is made; that is my rule.

Question. You could not sometimes, on account of a rush of business or an extraordinary case, have been obliged to enter up the sale on the day after the sale?

Answer. That book goes ahead of everything else with me—to enter sales as they occur.

Question. But I ask you if that does not happen in some cases?

Answer. I don't recollect any occasion of that kind.

Question. Who makes the order in your house for the delivery of the cotton?

341 Answer. There are three or four there, sir, that do it; if we are rushed anybody that happens to be idle that can make the order does it.

Question. How soon is the order made?

Answer. We generally try to make them on the same night. Mr. Harris' orders are to make them on the same night as they are made—as the sales are made.

NORMAN EUSTIS.

Sworn to and subscribed before me this 6th day of December, 1883.

MARK BREEDEN, JR.,
Notary Public.

342 DECEMBER, 1881.

438	27	81 b. c.; 70 b. c. taken @ $11\frac{7}{16}$ To J. Williams & Co. De Buys & Labouisse, brokers.	Jan.	5	$3,998 42
439	"	118 b. c.; 738 taken @ $10\frac{3}{4}$			
440	"	55 b. c. @ $10\frac{3}{4}$	Dec.	30	$37,088 03
441	"	97 b. c.; 96 b. c. taken @ $10\frac{3}{4}$			
442	"	472 b. c. @ $10\frac{3}{4}$			
			Dec.	29	$10,000
			"	30	27,088 03
		Am't retain			37,088 03
		To R. G. Musgrove & Son.			
443	"	177 b. c.; 129 b. c. taken @ $11\frac{7}{16}$ To Labouisse & Dohle. L. Christ & Co., brokers.	Jan.	5	$6,592 80
J. AS	27	161 sacks bran, w'h'g 29,930 lb, @ $10.00 per ton To F. Rickerts, Jr.	Dec.	30	$104 65
444	28	82 b. c. pur.; 275 b. c. taken @ $10\frac{5}{8}$ To A. G. Nicolopula.	Jan.	9	$3,603 15

445	"	114 b. c.; 108 b. c. taken @ 10⅞ To A. G. Nicolopula. Jones & Co., brokers.	Jan. 9	$5,364 95
446	"	81 b. c.; 77 b. c. taken @ 11⅛ To Seigfried & Co. C. L. De Fuentes, brokers.	Jan. 2	$3,057 71
447	"	126 b. c.; 96 b. c. taken @ 11⅝ To Labouisse & Dohle. De Buys & Labouisse, brokers.	Jan. 5	$4,780 78
448	"	50 b. c.; } 218 b. c. taken @ 11¼	Jan. 3 }	$10,848 86
449	"	257 b. c.; } @ 11¼	Jan. 3 }	
		To R. G. Musgrove & Son.		
343		DECEMBER, 1881.		
KS | AP	27	2 bbls. sugar, 400 lb, 6⅛c.	24 50	
"		2 hhds. " 2,363 lb, 6⅛c.	144 73	
		To Agor & Lelong.	Jan. 2	169 23
Leighton	28	24 hhds. sugar, 34,385 lb, @ 8¼c. To Barkley, Thompson & Co.	Jan. 2	$2,836 76
450	28	942 b. c.; 940 b. c. taken, charged in %— invoice, 422 b. c., @ 11¼ invoice, 518 " charged in % To G. H. Green & Co.	Jan. 7 Jan. 10	$20,592 33 $24,892 99
451	29	5 b. c., light, @ — To. H. S. Smith, Jr., & Co.	M'ch 17	$148 95
452	"	122 b. c.; 114 b. c. taken @ 11¼	Jan. 4	$6,295 95
453	"	99 b. c.; 94 " " @ 11⅜	Jan. 4	$4,654 53
454	"	139 b. c.; 131 " " @ 11 1/16	Jan. 7	$6,424 76
		To Wooley & Von Meyenberg. J. P. N. Bquie, broker.		
455	"	9 b. c. @ various —, ch'g'd in % To G. E. Pitcher & Co.	Dec. 29	$432 84
456	"	47 b. c.; 45 b. c. taken @ 10⅜c. To H. G. Nicolopula. Jones & Co., brokers.	Jan. 7	$2,156 56
457	"	38 b. c.; 37 b. c. taken, dusty, @ 10c.	Jan. 3	$1,774 00
458	"	97 " 96 b. c. taken, mixed & dusty, @ 10½ To D. Haggerty & Buyer.	Jan. 3	$4,600 47

459	30	56 b. c.; 56 b. c. taken, extra binders, @ 11⅜	Jan.	3	$2,889 14
460	"	86 b. c. pur.; 579 b. c. taken, " @ 11¼	Jan.	3	$3,999 83
		To Williams & Crane.			
461	"	133 b. c. pur., 5; 121 b. c. taken @ 10⅝	Jan.	3	$6,008 65
		To Williams & Crane.			
		L. Christ & Co., brokers.			
462	"	35 b. c., extra staple, @ 13¼	Jan.	—	For settlement see list 476.
		To Wm. Cunningham, Son & Co.			
344		DECEMBER, 1881.			
463	30	7 b. c., mixed, @ 11¼	Jan.	3	$334 35
464	"	9 b. c., " @ 11¾	Jan.	3	$430 00
		To Charles Hemord, buyer.			
J. AS	6th	90 sacks r'gh rice, w'h'g 162,480 lb. @ 5.25 per bbl., 162 lb = 1,002, 963 bbls., @ 5.25c.	$5,265 56		
		8 % int. for 23 days	26 92		
			Jan.	9	$5,292 48
		To Louis Burch, payable Jan'y 6–9, 1881.			
465	31	71 b. c.; 59 b. c. taken @ 11½	Jan.	4	$3,102 59
		To Knoop, Frerich & Co.			
		L. Christ & Co.			
466	"	1 b. c., light	M'ch	17	$31 28
		To H. S. Smith, Jr., & Co.			
467	30	6 b. c.; 3 @ 11⅝; 3 @ 11½, ch'g'd in %	Jan.	10	$332 48
		To J. E. Pitcher & Co.			

NEW ORLEANS, LA., *Dec.* 3, '83.

I hereby certify that the pages numbered above 131, 132, & 133 are true and exact copies, letter for letter, word for word, figure mark for figure mark, pencil mark for pencil mark, ink mark for ink mark, of pages numbered 131, 132, & 133 in a book labeled "Blotter No. 6, J. L. H. & Co.," referred to by Norman Eustis, Esq., and John M. Parker, Esq., in depositions given before me this day in the case of J. P. Walworth *et al. vs.* J. L. Harris & Co. *et al.*, pending in the United States circuit court for eastern district of Arkansas, this being an exact *verbatim et literatim* copy of the aforesaid pages of the aforesaid book.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, Louisiana.

Sale No. 450.

NEW ORLEANS, *Dec.*, 1881.

Penn's press—

Will please deliver to G. H. Green & Co. eight hundred & eighty-two bales cotton as below, — privilege of rejecting — bales.

L C B | M B	5 Frank	Nov. 16	Leland				
Leland			G[6]C. G[1]R. J[10]J	17	Chouteau	Dec.	8
4. WM. R K[4]	8		P.[3]H. H.[1] J G[6]	10			
D E[3] F H[8]	11		A[3]W. E[3]T. J. M[2]	8			
S[2] G R[1]	3		D.[2]C. E.[1]C. A B.	4			
D[4]L W[4]L	8		D.	1			
P. P			2 L C B				
R[6]J. C J[3]	9		L. H. D.[2] A[6]G	11			
L[6]S E[2]S	8		D[59]G. M[1]W	60			
J[6]C. J[2]CJ. M[2]C	11		A[3]T. C.[2] R[2]B. C[4]T.	11			
Leland							
S[11]L R B[7]	18 Chouteau	23	E.[5]W. R.[2] T.[2] J[3]	12			
W[2]M. N[2]J	4		S.[1]B.	1			
			Pt. Chicot				
B C | G	12		E.[12]J. R.[7] S C[3]	22			
G[1]R. E C [C][1]	2		W[5]S. J[4]W. [J. W][2]	11			
H C N	5		C[8]W. E[15]T J. A[7]	30			
Pt. Chicot							
R.[17] J E G[13]	30		J[7]R. E[3]P. N[3]M.	13			
F[2]M. S[2]G J[2]	6		P W.[19] E[9]C [E J][1]	29			
			Leland				
C[11]E. L[1]C B. J[4]H	16		M.[1] J D.[5] M G[1]	7	Frank		15
R[7]R. H[2]H. F[5]F	14		I.[5]H. R B.[3] M[2]K	10			
E.[1] R[3]J. S[11]H	15		G D.	2			
R[7]H. C[5]C. M[5]L	17		L C B | E K	1			
			Pt. Chicot				
J L H | M	1 Frank	16	R.[1] C B.[4] N M[3]	8			

Le-and							
$C^{10}B.\ R\ D^{3}$	13	"	Dec. 1	$E^{4}M.\ R^{11}C.\ J\ P^{14}$	29		
$B\ R^{6}\ E.\ [T]^{1}\ O^{3}G$	10			$E^{14}L.\ E^{11}C.\ J\ E^{10}$	35		
$F^{14}G\ N^{2}B\ A^{7}L$	23			$R^{9}B.\ A\ H.^{3}\ R^{1}J$	13		
$T^{6}W.\ E^{3}J.\ C^{1}$	10			$E^{4}C.\ R^{15}V.\ A^{5}B$	24		
$R^{2}S.\ E^{4}K.\ K^{2}H$	8			$X^{3}L$	3		
				L C B			
$R.^{1}\ W^{1}C.\ M^{1}B$	3			$J^{19}R.\ J\ C.^{11}\ N\ G^{2}\ W$	32		
$M^{1}L.\ P.C^{2}\ \vert\ G\ L$	3			$W^{6}C.\ M^{4}B.\ W\ S^{1}S$	11		
J. L E | M	6	Chouteau	8	$W^{3}S.\ G^{1}P.\ S^{2}R$	6		
Pt. Chicot				L C B			
$F\ E^{3}\ G.\ D^{4}C.\ L^{4}G$	11	Chouteau	Dec. 23	$E^{1}S\ S\ S.^{2}\ R\ D^{1}$	4	Frank	Dec. 15
				Leland			
$R^{10}W.\ A^{8}L.\ G^{1}H$	19			$J.^{25}\ HJ.^{3}\ R\ S^{5}$	33	Chatoeco	23
$M^{1}L.\ J^{24}G.\ B^{3}R$	28			$D^{6}G.\ W^{2}E.\ S^{1}$	9		
				L C B			
$G^{2}P.J.^{1}F.\ A.^{4}B$	7			$G^{12}J.\ E\ T.^{3}\ J^{1}I$	16		
$W.^{1}G.\ S^{4}G.\ B^{4}F$	9			$G.^{6}\ D^{1}G.\ C\ R^{1}$	8		
$R^{2}V.\ K^{2}V.\ J^{14}L$	18			$S^{1}R.\ I.^{3}W.\ G^{1}$	5		
$P.^{1}W.\ T^{11}N.\ X^{1}T$	13			D C	1	Terrell's press	
W L	2						
Pt. Chicot	1						
	386				497		

J. L. HARRIS & CO.

Ac. G. H. Green & Co. Jan'y 10, '82.

346 *Sale No.* 450.

NEW ORLEANS, *Jan.* 4, 1882.

Terrell's press will please deliver to Gilbert H. Green & Co. sixty bales of cotton as below, — privilege of rejecting — bales:

Leland	D. B	6	Henry Frank, Dec. 29.
"	C. H	3	
"	P. K	2	
"	H. B	4	
"	W. S	4	
"	H W	4	
"	R	2	
"	I J	7	
"	P. H	4	
"	P.	6	
"	D L	1	
"	R E	1	
Point Chicot	[50]	1	
	P. J. S	5	
	G K	7	
L. C. B.	T P	2	
		1	
		60 b. c.	

(Signed) J. L. HARRIS & CO., *Sampolis.*

[Endorsed:] Exhibit D. December 1, 1883. U. S. C. c't, east. dist. of Ark. J. P. Walworth *et al. versus* J. L. Harris & Co. *et al.* G. E. Pitcher. Mark Breeden, Jr., notary public.

347 *Sale No.* 450.

NEW ORLEANS, 4 *Jan.*, ——.

Terrell's press will please deliver to Gilbert H. Green & Co. sixty bales cotton as below, — privilege of rejecting — bales:

Leland	D. B	6	Henry Frank, Dec. 29.
"	C N	3	
"	P. K	2	
"	H. B	4	
"	W. S	4	
"	H W	4	
"	R	2	
"	L J	7	
	P H	4	
	P	6	
	D. L	1	
	R E	1	

Pt. Chicot	[J O]	1
	P. J S	5
	G K	7
L C B	T P	2
"	L	1

60 bales of cotton.

J. L. HARRIS & CO., *Sampolis.*

[Endorsed:] Exhibit C. Dec. 1st, 1883. U. S. C. C., east. dist. of Ark. J. P. Walworth *et al. vs.* J. L. Harris & Co. *et al.* G. E. Pitcher. Mark Breeden, Jr., notary public.

348 J. L. Harris. J. M. Parker.

Office of J. L. Harris & Co., cotton factors and general commission merchants, No. 38 Perdido street.

NEW ORLEANS, *Jan'y* 10, 1882.

Mess. L. C. Bryan & Bro., Luna, Ark.

GENTLEMEN: Owing to the garnishment of Judge Whitaker, J. L. Harris & Co. had to cross out your future cottons in order to answer. They bought, at the same price, for their own ac. 2,000 bales and will probably buy 500 more to-day or to-morrow. I will be at Luna in about a week and hope to see you; leave this evening for Bayou Sara.

Yours truly,
(Signed) JNO. M. PARKER.

[Endorsed:] Exhibit E. Dec. 3, '83. U. S. cir. c't, eastern dist. of Ark. J. P. Walworth *et al. vs.* J. L. Harris & Co. Jno. M. Parker. Mark Breeden, Jr., notary public.

349 NEW ORLEANS, 29 *December*, '81.

Terrell's press will deliver Mess. G. H. Green & Co. one hundred and seventy-nine b. c., as below, *en* "Chouteau," 23 Dec., '81—

Pt. Chicot		1
	J. H. G.	3
	D. C	4
	L G	4
	R W	10
	A. L	8
	G H	1
	M L	1
	J. G	24
	B B	3

	G P	2
	J F	1
	A B	4
	W. G	1
	S G	4
	R F	4
	R V	2
	K V	2
	J L	14
	P. W	1
	T N	11
	X L	1
	W L	2
		108
Leland,	J	25
	H J	3
	R S	5
	D G	6
	W E	2
	S	1
	L C B G J	12
	E T	3
	J L	1
	G	6
	D G	1
	C R	1
	S R	1
	L W	3
	G	1
		179

& oblige—

J. L. HARRIS & CO.
BREEDEN.

350 NEW ORLEANS, LA., *December 1st*, 1883.

I hereby certify that the reverse hereof is a true and exact copy of the exhibit marked B, December 1st, 1883, introduced in connection with G. E. Pitcher's testimony before me to-day in the case of J. P. Walworth *et al. versus* J. L. Harris & Co. *et al.*, pending in the United States circuit court for the eastern district of Arkansas.

MARK BREEDEN, JR.,
Notary Public.

351 In repurchase 942 bales, @ 11¼, from J. L. Harris & Co., 28th December, 1881.

Extract from Our Cash Book.

Paid J. L. Harris & Co., 5th January, 1882, $47,100 on ac. of 942 b. bought 28th December, 1881.

Amount of invoice, 185 b.		$8,947 91
" " " 237 "		11,644 42
" " " 518		24,892 98
		$45,485 13

Balance due us, $1,614.69.
Returned to us by J. L. Harris & Co. 10th January, 1882.
GILBERT H. GREEN.

352 NEW ORLEANS, *January 10th*, 1882.

Received from J. L. Harris & Co., part of purchase 28th Dec., '81, 942 b. c. @ 11¼c.

St. mid., A. D O, 1–28	28	ship Melberly.
Midd., L P H, 1–97	97	"
St. low mid., F R E, 1–100	100	"
St. low mid., W E T, 1–19	19	"
Low mid., D R I, 1–99	99	"
Low mid., I N K, 1–59	59	"
St. good ord'y, R Y E, 1–63	63	"
Good ordinary, M U L, 1–36	36	"
Ordinary, O I L, 1–5	5	"
St. ord'y good class, L B R, 1–12	12	"
Benders	518	Penn's.

Rej. 1 b. c., dusty.

[Endorsed:] Green. No. 2. December 1, '83. J. P. Walworth *et al. vs.* J. L. Harris & Co. *et al.* U. S. C. C., E. D. of Ark. Gilbert H. Green. Mark Breeden, Jr., notary public.

353 NEW ORLEANS, 31*st December*, 1881.

Received from J. L. Harris & Co., part of purchase 28th Dec., '81, 942 b. c. @ 11¼c.

Mid. full class, L A. S, 1 |	49	Melberly.
St. low mid., T D A	43	"
Low mid., Y O F, 1 |	48	"
St. G. ord'y, M O N, 1 |	18	"
St. ord'y [T H], 1 |	21	"
Ord'y (31), 1 |	6	"
Benders	185	Penn's.

NEW ORLEANS, *5th Jan'y*, '82.

Received from J. L. Harris & Co., part of purchase 28th Dec., 1881, 942 b. c. @ 11¼c.

Str. middl'g, G R E, 1–5	5	Melberly.
St. low to midd., E N S, 1–55	55	"
Low middl'g, T E W, 1–60	60	"
Str. good ord'y, A R T, 1–42	42	"
Good ord'y, full class & co., 1–37	37	"
Strict ord'y, L E V, 1–24	24	"
Ordinary, P V L, 1–14	14	"
Benders	237	
Rej., 1 dusty	1	
	238	Terrell's.

[Endorsed:] U. S. C. C., E. D. Arkansas. "Green. No. 2. Dec. 1, '83." J. P. Walworth *et al. vs.* J. L. Harris & Co. *et al.* Gilbert H. Green. Mark Breeden, Jr., not. public.

354 NEW ORLEANS, LA., *7th December*, 1883.

To the clerk of the United States circuit court, eastern district of Arkansas, Little Rock, Arkansas.

DEAR SIR: I mailed you to-day some depositions taken before me in the case of J. P. Walworth *et al. versus* J. L. Harris & Co., pending before your court.

A- the request of Judge Whitaker, of complainants' counsel, I enclose you an affidavit of Francis Fabre as to the arrival of steamer Henry Frank in December, 1881. He will no doubt instruct his associate counsel what to do with it.

Yours truly, MARK BREEDEN, JR.

355 Francis Fabre, being duly sworn, deposes and says that he is commercial reporter and statistician of the New Orleans Price Current, and held the same position on the 29th December, 1881; that, according to the records of the office of the New Orleans Price Current, the steamer Henry Frank arrived at the port of New Orleans on one occasion on December 29th, 1881.

FRANCIS FABRE.

Sworn to and subscribed before me this 7th day of December, 1883, at New Orleans, Louisiana.

MARK BREEDEN, JR.,
Notary Public for the Parish of Orleans, La.

356 The lease offered in evidence is as follows:

The following *prayel* of a lease of Point Chicot plantation, in Chicot county, State of Arkansas, is this day entered into between L. C. Bryan, of said county and State, and J. S. Whittaker, agent and

attorney of H. F. Walworth's heirs, owners of said property—that is to say:

This lease is to continue for five years, say from the 1st January, 1879, to 1st January, 1884, at $5,500 a year for the first four years, payable annually on the 1st January, 1880, 1881, 1882, 1883, and for the 5th year on the 1st December, 1883, it being understood that the said L. C. Bryan binds himself to put up twelve good and substantial single quarters on the most desirable lands, and to
357 clear up as much land not now in cultivation as can be worked by the additional number of hands that the additional number of houses will accommodate, said buildings to be as much as 18 x 16 feet, with front gallery, back gallery, and shed-rooms and chimney, and otherwise furnished so as to be comfortable for the occupants; and it is further understood that, during the pendency of this lease, the said lessee may build any other quarters or houses he may deem necessary or profitable, and clear up further lands upon the property, and that *this* twelve single houses and quarters, built as aforesaid, and such other improvements as may be added by the lessee and the clearing of said lands shall be at the cost and charge of said L. C. Bryan, lessee aforesaid.

358 And it is further understood and agreed that all the buildings, of what nature soever, upon the plantation, as also the fencing, shall be kept in good order during the pendency of this lease, and all necessary repairs made by lessee in order to keep said buildings and fences in good order, and at the end of said lease the said property shall be delivered up in good order to the lessor, ordinary wear and tear excepted, or fire or other calamity beyond lessee's control.

And it is further understood that the gin stands and machinery connected therewith are in good order at this time, shall be kept in like good order during the pendency of the lease and returned
359 in good order to the lessor, and if by any contingency said gin stands or machinery be destroyed by fire or otherwise the same will be rebuilt and restored within a reasonable delay by lessor.

And it is further understood that the lessor shall have his lien on crop for the security and payment of his rent as set forth in this lease.

And, further, — all non-compliance with any obligation of agreements set forth in this lease, or if said lessee shall at any time fail to pay the rent agreed upon, this lease shall be annulled and the contract at an end.

Lessor reserves the privilege of selling the plantation on notice of twelve months to lessee.

Leland Plantation, December 11, 1878.

J. S. WHITAKER.
L. C. BRYAN.

360 NEW ORLEANS, 25*th April*, 1879.

For value received of J. L. Harris & Co. I hereby transfer and assign to them my entire three-sixteenths ($\frac{3}{16}$) interest in the rents due and collectable under the within lease on 1st January,

1880, to wit, three-sixteenths ($\frac{3}{16}$) of fifty-five hundred ($5,500) dollars.

J. S. WHITAKER.

Attest: THOS. DAY.

[Written on the face:] This assignment released Jan'ry 9th, 1880. J. L. Harris & Co.

361 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 14 day of April, anno Domini one thousand eight hundred and 84, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were held, to wit, on April 17, 1884, as follows:

JOHN P. WALWORTH, MARY H. SEVERANCE, HANNAH W. STRICKland, Benjamin Strickland, John Walworth, Sarah Walworth, Ann Walworth, Mary Walworth Bradbury, Samuel A. Bradbury, William P. Halliday, Thomas W. Halliday, Barney Carbery,
362 Thos. Casey, B. Lowenstein, E. Lowenstein, & A. L. Lowenstein

v.

JOSEPH L. HARRIS & JOHN M. PARKER, under the Style of J. L. Harris & Co.; The State of Louisiana; E. T. Carlton, as Trustee; Sarah E. Bryant, Joel E. Bryant, Luke Sells, & Miles Sells.

Come the complainants, by Reynolds, Carlton & Springer and U. M. & G. B. Rose, Esqs., their solicitors, and come the defendants, by J. F. Robinson, Compton, Battle & Compton, and Stephenson and Trieber, Esqs., their solicitors, and this cause having been heretofore submitted, *and* the court, being now well advised in the premises, considers that the said bill be, and the same is, dismissed for want of equity.

And on April 25th, 1884, as follows:

JOHN P. WALWORTH *et al. v.* JOSEPH L. HARRIS *et al.*

363 Come the complainants, by D. H. Reynolds, Esq., their solicitor, and file herein their motion for rehearing; which motion is as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas.

JOHN P. WALWORTH & Others *vs.* J. L. HARRIS & Co. & Others.

Come the complainants, John P. Walworth and others, the heirs-at-law an- legal representatives of Horace F. Walworth, deceased,

and moves the court to grant them a rehearing of so much of this cause as relates to their claim for the rent of Point Chicot plantation for the year 1881.

D. H. REYNOLDS,
Solicitor for said Complainants.

Filed April 25, 1884.

RALPH L. GOODRICH, *Clerk.*

364 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 27 day of October, anno Domini one thousand eight hundred and 84, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on December 5, 1884, as follows:

JOHN P. WALWORTH *et al. v.* JOSEPH L. HARRIS & Co.

Come the complainants, by D. H. Reynolds, Esq., their solicitor, and come the defendants, by J. F. Robinson, Esq., their so-
365 licitor, and the court, being now well and sufficiently advised of the matters arising on the motion for rehearing heretofore filed herein, considers that the same be overruled.

And on March 6, 1885, as follows:

JOHN P. WALWORTH *et al. v.* J. L. HARRIS & Co.

Comes Sarah Walworth, executrix of the will of John P. Walworth, deceased, one of the complainants herein, and, on application, is made a party in her representative capacity in place of said deceased; and, on application of said Sarah Walworth, as executrix, and Mary H. Severance, Hannah W. Strickland, Benjamin H. Strickland, John Walworth, Sarah Walworth, Ann Walworth, Mary Walworth Bradbury, and Samuel A. Bradbury, as heirs and legal
366 representatives of Horace F. Walworth, deceased, an appeal is granted to the Supreme Court of the United States from so much of the final decree in this cause as relates to the claim for the rent of five thousand five hundred dollars ($5,500) for Point Chicot and from the decree overruling the motion for a rehearing of so much of said final decree.

And, by consent of parties, the clerk of this court is directed to make out, on application of parties appealing, a transcript of so much of the evidence in this case as relates to said claim for rent, together with the record entries herein, and certify the same to the Supreme Court of the United States.

Which application is as follows:

367 JOHN P. WALWORTH *et al. v.* J. L. HARRIS & Co.

Comes Sarah Walworth, as executrix of the last will of John P. Walworth, now deceased, one of the complainants herein, and moves

the court to be made a party in her representative capacity in the place of said deceased, and with her come also the said Mary H. Severance, Hannah W. Strickland, Benjamin H. Strickland, John Walworth, Sarah Walworth, Ann Walworth, Mary Walworth Bradbury, and Samuel A. Bradbury, and said John S. Whitaker, agent and attorney for said heirs of Horace F. Walworth, deceased, parties herein, and pray the court for an appeal from the decree of this court in overruling their motion for rehearing of so much
368 of this cause as relates to the rent of Point Chicot and from so much of the final decree in this cause as decreed in favor of said defendants, J. L. Harris & Co., in relation to said rent, to the Supreme Court of the United States.

And they further pray that the court, by order, direct the clerk, in making the transcript for the Supreme Court, to include only so much of the evidence as relates to said rent claimed by the parties praying an appeal, together with the recent entries in the cause.

D. H. REYNOLDS,
Solicitor for Complainants.

Filed March 6, 1885.

RALPH L. GOODRICH, *Clerk.*

369 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this 8th day of April, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth.

[The Seal of the Circuit Court, Arkansas District, U. S. A.]

Attest: RALPH L. GOODRICH, *Clerk.*

Endorsed on cover: E. Arkansas C. C. U. S. No. 148. Sarah Walworth, executrix of John P. Walworth, deceased, Mary H. Severance, Hannah W. Strickland, *et al.*, appellants, *vs.* Joseph L. Harris and John M. Parker, as J. L. Harris & Co., *et al.* Filed October 17, 1885.

No. 148.

Supreme Court of the United States.

OCTOBER TERM, 1888.

SARAH WALWORTH, EXECUTRIX OF JOHN P. WALWORTH, DECEASED; MARY H. SEVERANCE, HANNAH W. STRICKLAND, ET AL.,
Appellants.
vs.
JOSEPH L. HARRIS AND JOHN M. PARKER AS J. L. HARRIS & CO., ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLANTS.

On December 11, 1878, the heirs-at-law of Horace F. Walworth, appellants herein, rented their Pt. Chicot plantation, near Columbia, in Chicot County, Arkansas, to L. C. Bryan for five years—from Jan. 1st, 1879, to Jan, 1st, 1884—for $5,500 a year, payable annually, for the first four years, on the 1st day of January, 1880, 1881, 1882, 1883, and for the fifth year on Dec. 1st, 1883; and retained in the lease a lien on the crops to be raised on the leased premises to secure payment of the rent. The rent for 1879 and 1880 was paid. The rent for 1881 was not paid, and is the matter in controversy in this suit.

Prior to 1879 L. C. Bryan and his brother J. E. Bryan were in partnership as merchants at Columbia, and were also engaged in planting, and treated the lease of Pt. Chicot as a partnership matter, received the crops from the place and paid the rent on it, and they continued in partnership, and

in such business, until the death of L. C. Bryan, about Jan. 16th, 1882. And during all this time J. L. Harris & Co., of New Orleans, the appellees herein, were their commission merchants, and received the cotton from Pt. Chicot from them, and paid the rent for 1879 and 1880 for them.

On Dec. 9th, 1881, L. C. Bryan & Brother made a deed of trust to one Z. T. Carlton, as trustee, to secure to said J. L. Harris & Co. $35,000, evidenced by their four promissory notes, conveying with other property about two hundred and fifty bales of cotton of the crop of Pt. Chicot for 1881, then yet on the plantation, mentioning the plantation as leased from the heirs of Walworth, besides lands, &c., the property of the individual members of the firm, and property of the firm, being quite, or all, of their visible assets. The cotton went to J. L. Harris & Co., and was sold by them in the latter part of Dec., 1881, or early in Jan., 1882—the agreement to sell being made on Dec. 28th, 1881, and the sale being completed by delivery after that time, and by or before the 10th of Jan., 1882.

The heirs of Walworth, the appellants, and other creditors of L. C. Bryan & Brother, believed that the object in obtaining $25,000 of the $35,000 was to pay debts due them, then due or maturing, and that they had arranged with J. L. Harris & Co. for such payment; but J. L. Harris & Co., after all the cotton raised on Pt. Chicot in 1881 had been received and sold by them, refused to pay the rent of Pt. Chicot for 1881, as also the debts due others of said creditors, and the trustee was preparing to sell the property mentioned in the deed of trust, not then already converted into money, and thereupon these creditors, including the

heirs of Walworth, on April 26th, 1882, brought this suit to enforce payment by them. Decree was rendered on April 14th, 1884, dismissing the bill for want of equity. On April 25th, 1884, the heirs of Walworth moved the Court for a rehearing of so much of the case as related to their demand for the rent of Pt. Chicot for 1881, and this motion was overruled on March 6th, 1885, and they appealed to this Court from so much of the decree as related to their demand for the rent of 1881, and from the decree overruling their motion, thus eliminating all matters except as to the rent, and all parties except the heirs of Walworth on one side, and J. L. Harris & Co. on the other side. The clerk was directed to make transcript of so much of the evidence as related to the rent, but the insertion of more seems to have been unavoidable.

From the bill (R. 233); the statements and admissions in the answer (R. 20, 27, 28, 29); the lease and its indorsements (R. 5, 6, 115, 116); the deed of trust (R. 9); and in the testimony of J. L. Harris (R. 47, 48); of J. E. Bryan (R. 38, 39); of J. S. Whitaker (R. 43, 63, 64); of John M. Parker (R. 55, 56); and the history of the sale of the cotton (R. from 66 to 114), it appears that Pt. Chicot plantation was rented by written lease, by the heirs of Walworth to L. C. Bryan in 1878, for five years—from Jan. 1st, 1879, to Jan. 1st, 1884—for $5,500 a year; that a lien was reserved in the lease to secure the payment of the rent; that J. L. Harris & Co. knew of the lease, and of its terms, having accepted and held it for a time as security for a loan, and knew of the lien for rent under the laws of Arkansas; that the deed of trust referred to the lease of Pt. Chicot

where part of the cotton conveyed, was raised in 1881, and included the individual property of the partners as well as the property of the firm; that L. C. Bryan & Brother were partners in planting, and as merchants, and treated the lease of Pt. Chicot as a partnership matter, and shipped the cotton from Pt. Chicot raised there in 1879 and 1880, to J. L. Harris & Co., and they paid the rent, after they received the cotton, to J. S. Whitaker as agent of the heirs of Walworth; that said John M. Parker was on Pt. Chicot during the year 1881, and knew it was leased and not in charge of the owners of the property; that 425 bales of cotton of the crop of 1881 were shipped from Pt. Chicot landing by L. C. Bryan & Brother to J. L. Harris & Co., all of which were raised on Pt. Chicot plantation; that J. L. Harris & Co., at the time they received the cotton from Pt. Chicot in 1881, knew the rent for that year had not been paid, and while they were receiving this cotton, between September and the latter part of December, 1881, they were requested to pay the rent as they had paid it for 1879 and 1880; that of the 425 bales of cotton raised on Pt. Chicot in 1881, only 123, if any, had been sold by J. L. Harris & Co. prior to the execution of the deed of trust on Dec. 9th, 1881, and the remainder were worth much more than the $5,500 due for the rent; that J. L. Harris & Co. received the 425 bales, and sold it, and retained the proceeds; that the sale of 942 bales of cotton, commencing on Dec. 28th, 1881, and being completed on or about Jan. 10th, 1882, included a large part, if not all, that was raised on Pt. Chicot in 1881; that the rent of Pt. Chicot for 1881 was due on Jan. 1st, 1882, and that within six

months thereafter this suit was brought to secure payment of the rent out of the cotton or its proceeds.

It is true that there is an attempt in the answer of J. L. Harris & Co., and in the testimony of the members of the firm, to deny knowledge of the terms of the lease, and of the lien by the laws of Arkansas for the rent, until after the cotton for 1881 had been received and sold by them; but other facts stated by them in their answer and in their evidence, and the evasions in giving their evidence, and the recitals in the lease, and in the deed of trust, both of which they accepted as security for money, entirely destroy the force of the denials.

The statute of Arkansas in force since July 23d, 1868, now *Section 4453 of Mansfield's Digest*, provides:

"Every landlord shall have a lien upon the crop grown "upon the demised premises in any year for rent that shall "accrue for such year, and such lien shall continue for six "months after such rent shall become due and payable."

And *Section 4459 of same Digest* provides:

"Any landlord who has a lien on the crop for rent shall "be entitled to bring suit * * * for the recovery of the "same, whether the rent be due or not, in the following "cases:

"First—When the tenant is about to remove the crop "from the premises without paying the rent.

"Second—When he has removed it, or any portion "thereof, without the consent of the landlord."

The statute of Louisiana, Act No. 66 of Laws of 1874, in force since that time, provides:

Sec. 2. "That when any merchant, factor, or other

"person, has advanced money, property, or supplies on cot-
"ton, sugar or other agricultural products, and the same has
"been consigned to him by ship, steamboat, vessel, railroad,
"or other carrier, the said agricultural products shall be
"pledged to the consignee thereof from the time the bill of
"lading thereof shall be put in the mail, or put into the pos-
"session of the carrier for transmission to the consignee; and
"the right of pledge shall be perfect, with the right of sale
"of said property which shall be fully vested in said con-
"signee, with the right to appropriate the proceeds of the
"sale to the payment of the amount due for such advances
"as may have been made thereon; *provided*, that nothing
"herein shall be so construed as to defeat or lessen the privi-
"leges of the laborers and landlords in this State for wages
"and RENT, as now existing by law."

Upon such state of facts, and with similar statutes in the States of Arkansas and Louisiana, the Court below dismissed the bill for want of equity.

ASSIGNMENT OF ERRORS.

The Court below erred in adjudging and decreeing that the complainants' bill be dismissed for want of equity, and in not decreeing that the complainants were entitled to the relief prayed for in their bill, under their liens for rent, and in not decreeing that J. L. Harris & Co. received the cotton raised on Pt. Chicot in 1881 impressed with the lien of complainants for rent of that year, and that they held same or its proceeds as trustees for complainants, and that they should pay the amount of such rent and the interest thereon to complainants, and in overruling complainants' motion for a re-

hearing of so much of their claim as related to the rent of Pt. Chicot for 1881.

BRIEF OF ARGUMENT.

By the laws of Arkansas, the landlord's lien is a charge upon the crop for the rent, and if the purchaser, or mortgagee, has notice of the lien for rent, he takes subject to the lien. Knowledge of the tenancy is sufficient notice to the purchaser or mortgagee of the lien for rent.

Smith vs. Meyer & Bro., 25 Ark., 609.

Volmer vs. Wheaton, 34 Arks., 691.

And it is not necessary in Arkansas to record a lease to give a landlord a lien on the crop for rent, as actual knowledge of the tenancy coupled with the lien for rent given by law is sufficient notice to bind parties who deal with the lessee, or acquire an interest in the crop within the period of limitation.

Smith vs. Meyer & Bro., 25 Arks., 611.

The landlord's lien is superior to the lien of the mortgagee and continues for six months after the rent becomes due, and he may pursue the produce of the rented premises, or the proceeds thereof in the hands of parties having notice of the lien, at any time within the six months.

Meyer vs. Bloom, 37 Arks., 43.

Buck vs. Lee, 36 Arks., 525.

Watson vs. Johnson, 33 Arks., 737.

King vs. Blount, 37 Arks., 115.

These authorities show that if J. L. Harris & Co., by virtue of their deed of trust, or otherwise, acquired an interest in the crop of cotton raised on Pt. Chicot plantation in 1881, and at the time had a knowledge of the tenancy of

Bryan, from whom they acquired such interest or lien, they acquired subject to the lien for rent, and that the lien for rent extended for the period of six months after the rent became due and payable. And the proof is clear that they knew of the tenancy, and so of the lien for rent.

They knew of the tenancy before, and at the time they accepted the deed of trust covering this cotton, and at the time they received the cotton as consignees when it was placed on board the steamer at the river landing in Arkansas. They received the cotton subject to all the liens and burdens then resting on it under the lease, and under the laws of Arkansas. When the cotton was placed on the steamer at the river landing in Arkansas, and the bill of lading deposited in the mail, or delivered to the carrier for the consignees, there existed the superior lien for rent, the lien under the deed of trust, and the lessee had a right to the excess after paying these amounts, if any.

Halliday vs. Hamilton, 11 Wall., 564.

And authorities there cited.

Chaffe & Son vs. Hyner, 31 La. Ann'l, 594.

And cases there cited.

The laws of Arkansas then gave a right of action for removing from the rented premises crops on which the lien for rent rested, without the consent of the landlord. The crop could not then be removed from the State without such consent, unless done surreptitiously, and Mr. Wharton in his work on *Conflict of Laws, Sec. 354*, says, "that the laws of the State from which goods are surreptitiously taken govern." So the laws of Arkansas must determine the rights of the parties in this controversy, and this suit having been instituted

within the period of six months, against the parties holding the cotton or its proceeds, with knowledge of the lien for rent must prevail. J. L. Harris & Co. could not have successfully resisted the lien for rent in Arkansas at the time the cotton was delivered to them by the lessee. Mr. Wharton, at Section 317, says: "The enforcement of the lien must be in accordance with the law to which the goods are subject, and the question whether a lien is intended depends upon the law governing the contract, * * * and generally the place of the contract, and of its performance are the same, for the delivery of the goods to the common carrier is a delivery to the vendee's agent, and hence a performance of the contract." Here the delivery of the cotton to the carrier was a delivery to the beneficiaries in the deed of trust. J. L. Harris & Co. and the lessee contracted about the cotton with reference to the laws of Arkansas, giving the lien for rent and protecting such lien, for to impute to them any other course would be to say that they were conspiring to violate the laws of Arkansas, by removing cotton from the State on which liens existed, and for the purpose of depriving the holders of the liens of their security, and such imputation is not allowable if a fair and honorable course can be imputed to them. So it is submitted that the rights of the parties hereto should be determined by the laws of Arkansas where the contracts were made, and where the cotton was received impressed with the lien for the rent with full knowledge of the lien.

Did the removal into Louisiana change the rights of the parties, or change the rule for ascertaining and enforcing

such rights ? for the parties are, and have since the delivery, been the same.

They might increase the difficulty of recovering the property, or the proceeds from them by the removal, but could not deprive the landlords of their lien or give themselves a better claim to it. Nor would the supposed advantage acquired by them, by the removal, give a solid basis on which to rest a claim that the laws of Arkansas giving the lien have no extra territorial force, and that the removal to Louisiana had brought the cotton within the influence of a lien by statute of that State, that by comity could not be displaced, and thereby give them as it were a new and better right to retain the cotton, or its proceeds against the lien under the laws of Arkansas for the rent.

The courts have frequently been called upon to determine the right of parties resulting from a conflict of laws, and it seems to be conceded that one State or Nation is not required by its courts through comity to deprive its citizens of a right under its laws by enforcing the laws of another State where the parties before the court come to their interest or claim, in or to the property, by regular course of trade without notice of the claims or rights of others than those from whom they acquire title or interest. But I have failed to find a case where the courts have interposed the shield of comity to protect a party in the possession of property where he has been instrumental in removing the property from a jurisdiction where there were liens in favor of himself and others, to a State where a new lien might attach and for his benefit.

If J. L. Harris & Co. pay the amount of rent due they will have left all they contracted for when they took their deed of trust, if they retain the amount due for rent, they will have what does not justly belong to them, and what they could only obtain by removing the cotton away from the jurisdiction of the courts of Arkansas, while they had the confidence of the heirs of Walworth who were relying on them to pay the rent as they had done the two previous years, for the same lessee under the same lease.

"Courts of justice have always expounded and executed contracts according to the laws of the place in which they are made; provided that law was not repugnant to the laws or policy of their own country. The comity thus extended to other nations is no impeachment of sovereignty. It is the voluntary act of the nation by which it is offered, and is inadmissible when contrary to its policy or prejudicial to its interest. But it contributes so largely to promote justice between individuals, and to produce a friendly intercourse between sovereignties to which they belong, that courts of justice have continually acted upon it, as a part of the voluntary law of nations." * * * "The intimate union of these States, as members of the same great political family; the deep and vital interests which bind them so closely together; should lead us in the absence of proof to the contrary, to presume a greater degree of comity and friendship and kindness toward one another than we should be authorized to presume between foreign nations. * * * They are Sovereign States, and the history of the past, and the events daily occurring, furnish the strongest evidence that they have adopted towards each other the laws of comity in

their fullest extent. * * * So far as any of them have acted on this subject it is evident that they have regarded the comity of contract as well as the comity of suit to be a part of the law of the State, unless restricted by Statute."

Bank of Augusta vs. Earle, 13 Peters, 519.

Story on Conflict of Laws, Sec. 38.

"And where there is no such lien by the laws of the State to which the property goes, liens by the laws of the place from which the property comes will be enforced, unless there are positive laws to the contrary, or there are conflicting local titles, then the lien is postponed."

Wharton on C. of L., Sec. 322.

"As a general rule a personal contract with attendant privileges and effects when made in another State will be enforced in Louisiana upon a movable according to the *lex loci contractus*, provided such enforcement be not contrary to our policy, and does not violate the order of priority established by our laws, and does not injure the rights of our own citizens, and provided further that we have by our own law the *lex fori*, the remedy which is asked."

Tyree & Co. vs. Sands & Co., 24 La. Ann., 363.

Chaffe & Son vs. Hyner, 31 La. Ann., 594.

In Louisiana the landlord has a privilege on the growing crop of the year to secure his rents, and this privelege is first except as to laborers' and overseers' wages.

Knox vs. Booth, 19 La. Ann., 109.

Duplantier vs. Wilkins, 19 La. Ann., 112.

Revised Statutes of La., Sec. 2873.

Prior to the Act No. 66 of 1874, extending the mode of factors acquiring liens, they had in Louisiana, for furnishing supplies, a lien equal to the privileges of the lessor.

Revised Statutes of La., Sec. 2874, and Sec. 2875.

6 La. Ann. 669.

13 La. Ann,, 443.

21 La, Ann., 535.

But the Act No. 66 of 1874, contains a saving clause in favor of landlords, placing them, as, in Arkansas, first in the order of holders of liens.

And in Louisiana, where notice of title has been brought home to a party, it supplies the place of registry of title; this knowledge of title or lien may be inferred by circumstances.

Smith vs. Lambeth, 15 La. Ann., 566.

Smith vs. His Curators, 21 La. Ann., 241.

Meyer vs. Brother, 21 La. Ann., 591.

The lessor in Louisiana is not required to record his lease in order to preserve his privilege, he having a right of pledge.

Johnson vs, Tackman, 23 La. Ann., 453.

Also see

21 La. Ann., 553.

In deciding to enforce a lien originating in Alabama in favor of vendor of cotton sold, where there was a similar law in Louisiana, the Louisiana Court says: "Neither the law of Alabama nor of Louisiana required, in 1869, this potent privilege to be recorded."

Tyree & Co. vs. Sands & Co., 24 La. Ann., 363.

In 1881 neither the law of Arkansas nor of Louisiana required the landlord's lien to be recorded, nor do either of them at this time.

"The Courts of one State will by comity respect the foreign law by protecting rights acquired under it, and will interpret and fulfill the obligations of contracts made in a foreign State or with reference to its laws."

Cox vs. Morrow, 14 Arks., 610.

"The doctrine that an action will lie when the Common Law or the Statutes of different States or Countries correspond, is sustained by numerous authorities." [Citing several authorities].

Leonard vs. Columbia Steam Nav. Co., 84 N. Y., 48, 55.

Morris vs. Chicago, Rock Island & C. Ry. Co., 65 Iowa, 727.

Knight vs. West Jersey R. R. Co., 108 Pa. St., 250.

The laws of Louisiana and Arkansas being the same in effect in relation to the lien of landlords for rent, this lien may be enforced in either of the states, according to the above authorities. Such lien for rent is not contrary to the policy of Louisiana, for she gives the same lien privilege by statute; it does not violate priority, for her priorities are in the same order; it does not injure the rights of citizens of Louisiana, for no rights for rent on the part of J. L. Harris & Co. are involved; nor does it infringe the rule that there must be a remedy by the *lex fori* such as is asked, for by the law of Louisiana the lessor's privilege is expressly reserved as against the factor, by Act No. 66 of 1874, and if it may be

enforced in either state "it may be enforced in any court which has jurisdiction of such matters, and can obtain jurisdiction of the parties."

The cotton from Pt. Chicot sent to J. L. Harris & Co. impressed with the landlord's lien, whether it went to them in Arkansas or in Louisiana neither they nor Bryan the lessee, could do any act that would destroy the lien impressed when it went into their hands, under the law of either State. And they should be held as trustees, and be decreed to pay the amount of the rent with interest.

Ellett vs. Butts, 19 Wall, 546.

If J. L. Harris & Co. assume that they received the cotton in New Orleans as consignees merely, and not as grantees under deed of trust, and that though the lien for rent was good in Arkansas, it had no extra Territorial force, and that the Factor's lien law of Louisiana attached in their favor and under it they legally could retain the cotton or its proceeds—then such assumption would not be tenable as they had notice of the lien for rent.

Having knowledge of the lien for rent at the time they received the cotton (whether in Arkansas or in Louisiana) they are in no sense innocent purchasers, or holders thereof, at least to the extent of the amount due for the rent.

"That the laws of a country have no extra-territorial force is an axiom of international jurisprudence; but things done in one country under the authority of law may be of binding effect in another country."

Canada Southern R. R. Co. vs. Gebhard, 109 U.S., 536.

"Wherever, by either the Common Law, or the Statute Law of a State, a right of action has become fixed and a

liability incurred, that liability may be enforced, and the right of action pursued, in any Court which has jurisdiction of such matters and can obtain jurisdiction of the parties."

Dennick vs. Railroad Co., 103 U. S., 11.

The right of action to enforce the lien for rent on the cotton from Pt. Chicot, or its proceeds, accrued and became fixed when J. L. Harris & Co. received the cotton in Arkansas, and this right might have been enforced in her courts or as Louisiana had similar laws it could have been enforced n her courts, or, in any court having jurisdiction of such matters, and certainly no court could be more appropriate for such enforcement than the United States Circuit Court for the District in which the transactions occurred.

If we look at this case as the facts make it, it does seem that the heirs of Walworth ought to have their rent, unless they have done some act to forfeit their right to it.

And it is respectfully submitted that the decree of the Court below should be reversed.

J. S. WHITAKER,
D. H. REYNOLDS,
Solicitors for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 148.

SARAH WALWORTH, EXECUTRIX OF JOHN B. WALWORTH, DECEASED, ET AL.,
Appellants,

v.

JOSEPH L. HARRIS AND JOHN M. PARKER, AS J. L. HARRIS & CO., ET AL.,
Appellees.

BRIEF FOR APPELLEES.

F. W. COMPTON.

PRESS PRINTING CO., LITTLE ROCK, ARK.

Supreme Court of the United States.

OCTOBER TERM, 1888.

NO. 148.

SARAH WALWORTH, EXECUTRIX OF JOHN B. WALWORTH, DECEASED, ET AL.,
Appellants,

v.

JOSEPH L. HARRIS AND JOHN M. PARKER, AS J. L. HARRIS & CO., ET AL.,
Appellees.

BRIEF FOR APPELLEES.

The appeal in this case is from only so much of the decree of the court below as relates to a claim of the appellants for the rent of the plantation in Arkansas, known as Point Chicot. The necessary facts are few, and may be concisely stated as follows:

The plantation was leased to L. C. Bryan for a term of five years at an annual rental of five thousand five hundred dollars. The lease was in writing, and stipulated that the lessor should have a lien on the crop for the security and payment of the rent; but was never recorded. The crop of cotton grown and gathered on the plantation in the year 1881—about two hun-

dred and fifty bales—was shipped by the lessee, through the mercantile establishment of L. C. Bryan & Bro., in which he was a partner, to the appellees, at New Orleans, in Louisiana, who were the commission merchants and factors of L. C. Bryan & Bro., and who had made advances to them on the cotton in an amount exceeding its value. The cotton was sold by the appellees at their place of business in New Orleans, in the usual course of trade, and the proceeds of the sale appropriated in payment of the advances they had made. Prior to the sale of the cotton the appellees had the lease in their possession from the 25th day of April, 1879, to the 9th day of January, 1880, as collateral for a loan to one of the lessors (*Printed Record, pp. 43, 115*), and at the time of the sale, which occurred about a year afterwards, knew that the rent for 1881 had not been paid; but had no knowledge at any time of the statute laws of Arkansas touching the landlord's lien for rent.

Upon this state of facts, in connection with the laws of Arkansas and Louisiana, the contention of the appellants is, that the landlord's lien having attached in Arkansas followed the cotton into Louisiana and gives them the right to recover from the appellees the proceeds of the sale, or so much thereof as may be necessary to satisfy their claim for rent, insisting that their lien is prior in time, and therefore superior to that of the appellees arising under the laws of Louisiana for the protection of merchants and factors. The effort of the appellees is to show that this proposition cannot be maintained.

The statutory provisions in the states of Arkansas and Louisiana bearing upon the question involved are as follows:

Revised Statutes of Arkansas of 1884.

"Section 4742. All mortgages, whether for real or personal estate, shall be proven or acknowledged in the same manner that deeds for the conveyance of real estate are now required by law to be proven or acknowledged, and when so proven or acknowledged, shall be recorded, if for lands, in the county or counties in which the lands lie; and if for personal property, in the county in which the mortgagor resides."

"Section 4743. Every mortgage, whether for real or personal property, shall be a lien on the mortgaged property from the time the same is filed in the recorder's office for record, and not before; which filing shall be notice to all persons of the existence of such mortgage."

"Section 4453. Every landlord shall have a lien upon the crop grown upon the demised premises in any year for rent that shall accrue for such year, and such lien shall continue for six months after such rent shall become due and payable."

"Section 4459. Any landlord who has a lien on the crop for rent shall be entitled to bring suit before a justice of the peace, or in the circuit court, as the case may be, and have a writ of attachment for the recovery of the same, whether the rent be due or not, in the following cases:

"First: When the tenant is about to remove the crop from the premises without paying the rent.

Second: When he has removed it, or any portion thereof, without the consent of the landlord."

"Section 4461. Such writ of attachment may be levied on the crop in the possession of the tenant, or any one hold-

ing it in his right, or in the possession of a purchaser from him with notice of the lien of the landlord."

Revised Code of Louisiana, 1870.

"Article 2705. The lessor has for the payment of his rent, and other obligations of the lease, a right of pledge on the movable effects of the lessee, which are found on the property leased, etc."

"Article 2709. In the exercise of this right, the lessor may seize the objects which are subject to it, before the lessee takes them away, *or within fifteen days after they are taken away, if they continue to be the property of the lessee, and can be identified.*"

Act of Legislature of Louisiana.

Session Acts, 1874, p. 114.

"Section 2. That when any merchant, factor, or other person has advanced money, property, or supplies on cotton, sugar or other agricultural products, and the same has been consigned to him by ship, steamboat, vessel, railroad or other carrier, the said agricultural products shall be pledged to the consignee thereof from the time the bill of lading thereof shall be put in the mail, or put into the possession of the carrier for transmission to the consignee, and the right of pledge shall be perfect, with the right of sale of said property, which shall be fully vested in said consignee, with the right to appropriate the proceeds of sale to the payment of the amount due for such advances as may have been made thereon: Provided, that nothing herein shall be so construed as to defeat or lessen the privileges of the laborers and landlords *in this State* for wages and rent as now exist by law."

It is thus perceived that there is a conflict between the laws of the two States; and the inquiry is, which must prevail?

1. The stipulation in the lease to L. C. Bryan reserving a lien for rent was, in legal effect, a chattel mortgage (*Jones on Chattel Mortg., sections 12 and 13; Herman on Chattel Mortg., section 33, and authorities there cited; Mitchell v. Badgett, 33 Ark., 387*); and not being recorded, created no lien under the laws of *Arkansas* against *third persons*, as decided in *Main v. Alexander, 9 Ark.. 112*, followed and affirmed in *Hannah v. Carrington, 18 Ark., 105; Jacoway v. Gault, 20 Ark., 190*, and in *Carnall v. Duval, 22 Ark., 136*, in which last named case, it is expressly laid down that these decisions are based upon a construction of the Arkansas Statute, which requires that a mortgage *shall be* recorded; and *shall be* a lien on the mortgaged property from the time the same is filed in the Recorder's office for record, and *not before*. Actual notice of the mortgage by third persons is not sufficient to create a lien as against them. Until the mortgage is recorded no lien *exists*, of which they could have actual notice. In many of the States it has been held, upon principles of general jurisprudence, that actual notice of a mortgage is equivalent to the constructive notice by registration; but the Supreme Court of Arkansas has uniformly refused to do so, basing its decisions upon a construction of the peculiar language of the Statute; and the construction thus given will be followed by this court.

The lien contracted for by the parties never having existed because of the failure to record it, may be laid out of the case, leaving no lien under the laws of Arkansas, except the

statutory one for the protection of landlords; which, as has been seen, is in conflict with a like law of Louisiana, and also with the law of that State for the protection of merchants and factors; and as to this conflict, it is insisted for the appellees:

2. That it is well settled upon principle and by authority that where, under the laws of one State, a lien on personal or movable property is created, either by contract or statute, and the property is afterward moved into another State, the laws of the State where the lien was created has no extra-territorial force except by comity, and such comity is *never* extended by that other State when it would interfere with her own policy, or be detrimental to the rights of her own people. Hence, where there are conflicting liens, as in this case, the lien under the laws of the State from which the property has been removed, *though prior in time*, must yield to the lien under the laws of the State into which it has gone and is found, the courts always giving priority or preference to the latter.

Wharton's Confl. of Laws, secs. 297 et seq. and sec. 324.

Story's Confl. of Laws (2 ed.), secs. 323, 324, 325 a, 524, 525.

Lee v. Creditors, 2 La. Ann., 599.

Merrick & Fenno v. Avery Wayne & Co., 14 Ark., 370.

Clark v. Tarbell, 58 N. Hampshire, 88.

McMahan v. Green, 12 Ala., 71.

Prevost v. Wilson, 17 Ohio, 359.

Harrison v. Sterry, 5 Cranch, 298.

Smith v. Union Bank, 5 Pet., 518.

Conceding that, under the laws of Arkansas, appellant's lien was paramount, it was only statutory; created by the laws of Arkansas, which had no extra-territorial effect. As soon as the cotton left that State, the State of Louisiana grasped it, enveloped it with her municipal laws, and gave to appellees a lien on it *prior* to appellant's, with the right to dispose of it as they did.

Admitting it to be true, that the Statutory lien of the appellants grew out of the tenancy of Bryan, and that the existance and validity of a lien acquired under a contract in one State is recognized in every other; nevertheless, according to the doctrine laid down by JUDGE STORY in his work on the Conflict of Laws, section 323, the recognition of the existence and validity of such a lien by a State other than that in which it was acquired must not be confounded with the *giving it* a superiority or priority over all other liens justly acquired in another State, under her own laws, and into which the property has been moved, merely because the former lien in the State where it first attached, had there, by law or by custom such a superiority or priority. Such a case, he said, would present a very different question, arising from a conflict of rights equally well founded in the respective States. This distinction was pointed out by MR. CHIEF JUSTICE MARSHALL in *Harrison v. Sterry, supra.* His language was: "The law of the place where a contract is made is, generally speaking, the law of the contract; i. e., it is the law by which the contract is expounded. But the right of priority forms no part of the contract itself. It is extrinsic, and is rather a personal privilege dependant on the law of the place where the property lies, and where the court sits which is to decide the cause. In the familiar case of

the administration of the estate of a deceased person, the assets are always distributed according to the dignity of the debt, as regulated by the law of the country where the representative of the deceased acts, and from which he derives his powers; not by the laws of the country where the contract was made." And the rule was, on that occasion, expressly applied to the case of a contract made in a foreign country with a person resident abroad.

In this case the law of Louisiana for the protection of merchants and factors gave the appellees a prior and superior lien, expressly limiting the saving, to landlords *in that State.* The cotton was shipped to and sold in Louisiana, and the proceeds of the sale applied to the satisfaction of this lien; which application having been made in accordance with the law of Louisiana, is binding in Arkansas.

Cammell v. Sewell, 5 Hurlston & Norman Exchequer, Rep. 728.

The proposition urged by connsel for the appellants that "a lien or right in personal property under the laws of one State will be good in another State, unless it comes in conflict with the rights of a *bona fide* purchaser, without notice of the existence of the lien or right under the laws of the State from which the property is taken," if sound, has no application to this case; because it leaves out of view and disregards the rights of the appellees, arising from the conflict of the laws of Louisiana with those of Arkansas. But conceding it, for the sake of argument, to be applicable, it does not help his case; for the rights of the appellees *were* acquired without notice of the existence of the lien or right claimed by the appellants. To have had notice of the appellant's lien for rent, they must

have had notice of the Statute of Arkansas giving it, at the time the advances were made, which, according to the evidence, they did not have. The mortgage clause in the lease, as above shown, created no lien, because the lease was not recorded, and actual notice of it was not sufficient to give it operation as a lien. The fact that they knew Bryan was a tenant of the appellants aud had not paid the rent was no notice of a lien. Without a knowledge of the existence of the statute they could not know that appellants had a lien. The appellees were non-residents of Arkansas, and were not bound to take notice of, nor were they presumed to know the laws of Arkansas, they having no extra-territorial effect, and which to them, were mere facts, standing as any other faets of which they had no knowledge.

The Bank of Chillicothe v. Dodge, 8 Barb., 233.
Haven v. Foster, 9 Peck, 112.

If anything is well established by authority it is, that where personal property is moved from one State, with liens on it, to another State where it is encumbered with other liens, the laws of the State where the property *is* regulates the priority of the liens. So, when the appellants omitted to enforce their lien in Arkansas, and permitted the cotton to be shipped to Louisiana, the superiority of their lien was lost.

3. But it is further insisted for the appellees that although the evidence does not show that they had knowledge of the laws of Arkansas which give the landlord a lien for rent, yet, if it were otherwise, or even if a valid lien had been contracted for, of which they had knowledge, such knowledge would not have affected their rights; because the superiority of their lien grows out of a conflict between the laws of their

own State and those of Arkansas, having no extra-territorial operation except by comity—public laws—enacted by each State pursuant to her own public policy, and for the protection of her own people. Under such circumstances can it be the law that a citizen cannot have the benefit of the laws of his own State, if he happens to have knowledge of conflicting laws in another? Is the operation of the laws of the one State *dependent* upon whether the citizen of that State has knowledge of the laws of the other? Upon any known principle, or for any good reason, an affirmative answer would seem to be impossible. To so answer would be putting intelligence at a disadvantage, and ignorance at a premium. Every person should be permitted to avail himself of the laws of his own State, no matter what he knows or does not know about the laws of another, or of liens contracted for under them, in cases of conflict, when the priority of liens is to be regulated.

The case of *Butt v. Ellett, 19 Wall., 544*, relied on by the counsel for appellant, was decided before the statute of Louisiana for the protection of merchants and factors was passed; and, consequently, the question here discussed touching the conflict of laws, did not, and could not, arise in that case; nor did it appear whether the lease containing the mortgage clause was recorded or not; and if unrecorded, whether upon a construction of the registration laws of Mississippi by the Supreme Court of that State it was held that actual notice of the lease was not sufficient to create a lien, as has been repeatedly decided, as to the registration act in Arkansas.

Respectfully submitted,

F. W. COMPTON,

Attorney for Appellees.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1858.

No. 148.

ELIZA WADSWORTH, Executrix of JOHN E. WADSWORTH, deceased, Et Al., Appellants,

versus

JOSEPH L. HARRIS AND JOHN H. PARKER, as J. L. HARRIS & CO., Et Al.

THOS. J. SEMMES,
Of Counsel for Appellees.

E. W. Hyatt, Stationer and Printer, 79 Camp Street, New Orleans.—1858.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1888.

No. 148.

SARAH WALWORTH, EXECUTRIX OF JOHN B. WALWORTH, DECEASED, ET AL., APPELLANTS,

versus

JOSEPH L. HARRIS AND JOHN M. PARKER, AS J. L. HARRIS & CO., ET AL.

The bill in this case was filed 26th April, 1882, by the heirs of John P. Walworth, and other creditors of L. C. Bryan & Bro., a commercial firm established at Columbia, in the State of Arkansas, against the commercial firm of J. L. Harris & Co., cotton factors in New Orleans, and Z. T. Carleton, trustee under a deed of trust, dated 9th December, 1881, given by L. C. Bryan & Bro. to secure a large amount of indebtedness due by them to J. L. Harris & Co., and also to secure any future advances that J. L. Harris & Co. might make to them.

The heirs of Walworth claimed $5500 to be due to them, as rent of Point Chicot plantation, for the year 1881; the plantation was leased by them to L. C. Bryan for a term of five years, commencing 1st July, 1879, and terminating 1st December 1883.

The claims of the other creditors it is not material to notice, because, on the dismissal of the bill, by the court below, the Walworth heirs alone appealed "from so much of the decree in this cause as relates to the claim for the rent of $5500 for Point Chicot," p. 117.

By consent of parties, the transcript was made up "of so much of the evidence in this case as relates to said claim for rents," p. 117.

The bill puts the claims of all the creditors who united therein, on the ground that they were in fact intended to be secured by the deed of trust given to J. L. Harris & Co., by L. C. Bryan & Bro., on 9th December, 1881.

This contention was not sustained by the evidence, and I presume will not be insisted on in this Court. It is clear that the deed of trust was given for the benefit only of J. L. Harris & Co., and to secure them an actual debt of $21,798 80, and an advance of $10,000, to enable L. C. Bryan to buy cotton. See account, p. 34, and Deed of Trust, pp. 8–13.

The object of the bill was to compel J. L. Harris & Co. and Carleton, the trustee, to allow the complainant and others to participate in the proceeds of sale of the trust property. Having failed in their proof, and the proceeds of sale of the trust property not amounting to more than about $8000, a sum, after deducting costs and expenses of sale, insufficient to pay one-half of the debt due to J. L. Harris & Co., the complainants abandoned their claim to the proceeds of the trust property sold by Carleton.

But the heirs of Walworth, who prosecute this appeal, had alleged in the bill that their claim for rent of Point Chicot plantation, for the year 1881, amounting to $5500, "was a lien upon the crops raised on said plantation, under the laws of Arkansas and the terms of the lease, and that a large amount of the cotton raised on said plantation in the year 1881, had already gone into the hands of said J. L. Harris & Co., *impressed with said lien for rent*, while other portions of said crops were *yet on the plantation being gathered and prepared for market*," p. 2.

The deed of trust conveys to the trustee, for the benefit of J. L. Harris & Co., "about two hundred and fifty bales of cotton in seed, lint and bales, on the Point Chicot plantation," (p. 9). Whether said two hundred and fifty bales were the product of said plantation, for the year 1881, is not stated.

There was no cotton sold by the trustee, for none came into

his possession. No cotton went into the hands of J. L. Harris & Co., after the death of L. C. Bryan, on 16th January, 1882, (p. 98), nor after the bill was filed, exeept one bale, on 27th April, 1882, (pp. 28–9). All of the cotton shipped by L. C. Bryan & Bro., from the shipping point called "Point Chicot," except the bale above mentioned, was received by J. L. Harris & Co. in the interval between November 23, 1881, and 29th December, 1881, (p. 28); and of the four hundred and twenty-five bales shipped from said shipping point, two hundred and two bales were received by J. L. Harris & Co. prior to December 9, 1881, the date of the deed of trust, (p. 28), and of these, one hundred and twenty-three bales were sold before the execution of the deed of trust, p. 38.

On December 28th, 1881, J. L. Harris & Co. sold to Gilbert H. Green & Co., nine hundred and forty-two bales of cotton, being all the cotton then on hand belonging to L. C. Bryan & Bro., including sixty bales to arrive. At the time this sale was made, L. C. Bryan was in New Orleans, (p. 94). Mr. Harris consulted him at the time the contract of sale was entered into' (p. 69). In this sale was included all the cotton shipped from Point Chicot, except one bale (p. 46), which was received 27th April, 1882, as above mentioned, (Exhibit D, p. 29). The sale of the sixty bales to arrive, included only one bale shipped from Point Chicot, (p. 41). These sixty bales, sold on 28th December, 1881, arrived on the 29th, and were delivered to Green & Co., on the 4th of January, 1882, p. 110.

The delivery of the nine hundred and forty two bales of cotton sold to Green & Co., on 28th December, 1881, was made on the following days:

31st December, 1881	185 bales.
5th January, 1882 (238 bales, one rejected)	237 bales.
10th January, 1882, (one rejected)	518 bales.
	940 bales.

The price paid was eleven and one quarter cents per pound, $45,485 13, (pp. 113-14). This amount, after deducting charges, produced net $42,241 65, which was carried to the credit of L. C. Bryan & Bro. on the books of J. L. Harris & Co. See letter of advice, p. 410.)

The state of account between L. C. Bryan & Bro. and J. L. Harris & Co., on 9th December, 1881, shows a total indebtedness of..... $45,108 80
Less estimated value of cotton on hand..... 23,310 00

$21,798 80

This debt of $45,108 80, was increased to $73,017 04, in the interval between 9th December, 1881, and 10th January. 1882, When the sum of $42,281 18, net proceeds of the nine hundred and forty bales of cotton, was carried to the credit of L. C. Bryan& Bro., on 10th January, 1882, there was an apparent balance in their favor of $9,261 24, (p. 26). But this was only an apparent balance ; for against it J. L. Harris & Co. held the three notes, secured by the deed of trust for $25,000, one of $10,000, which fell due 11th January, 1882, one for $10,000, which fell due 26th January, 1882, and one for $5000, which fell due 25th February, 1882, (p. 26). These notes had been discounted by J. L. Harris & Co., on 29th December, 1881, and the proceeds carried to the credit of L. C. Bryan & Bro. (p. 26). So that when the accounts were closed, J. L. Harris & Co. owed an apparent cash balance of $9,261 24, and held against it $25,000 in notes; the difference in favor of J. L. Harris & Co. being something over $15,000; subsequently, the proceeds of sale of the trust property were applied to this debt and reduced it to about $7,500, which, with interest, remains unpaid.

The contention of the appellants is, that J. L. Harris & Co. are liable to them for the rent of Point Chicot plantation, because they received and sold for account of L. C. Bryan & Bro., four hundred and twenty-five bales of cotton shipped from Point

Chicot during the months of November and December, 1881, with knowledge of the fact that L. C. Bryan, one of the firm of L. C. Bryan & Bro., was lessee of Point Chicot plantation for the year 1881, and had not paid his rent.

There is no evidence to sustain the position that J. L. Harris & Co. ever promised L. C. Bryan or any one else to pay the rent.

Indeed, the bill makes no averment on this subject, other than the general averment, that on 9th December, 1881, L. C. Bryan made arrangements with J. L. Harris & Co., for the payment of the rent and of all the creditors of L. C. Bryan & Bro., to the extent of $25,000, and for that purpose the deed of trust was executed.

This averment, as above stated, is denied in the answer, and there is no evidence to support it.

There is no averment in the bill that J. L. Harris & Co., at any other time, or by any other promise, distinct from the alleged arrangement, made themselves liable for the rent claimed by the heirs of Walworth.

It is thus perceived that prior to the filing of this bill in the Arkansas Circuit, all the cotton had been shipped to J. L. Harris & Co., in Louisiana, and had been sold by them, and they had applied the proceeds to the payment of the debt due to them by L. C. Bryan & Bro. It is to be observed that L. C. Bryan *alone* was *lessee* of the plantation, whereas, all the cotton shipped to J. L. Harris & Co., belonged to the firm, L. C. Bryan & Bro., and had been *acquired in the regular course of business.* Answer of Joel E. Bryan, p. 16.

When the cotton, shipped to J. L. Harris & Co., arrived within the territory of the State of Louisiana, the law of the situs applied to it, and the factors to whom it was consigned for sale, had the right to deal with it and its proceeds in the manner allowed by the law of Louisiana. This right cannot be affected or impaired by a subsequent suit *in personom* against such fac-

tors, to hold them liable for acts done in regard to the cotton in Louisiana.

Before shipment to Louisiana, the cotton raised on Chicot plantation had changed hands, the title of the lessee, L. C. Bryan, had been transferred to his firm, and the cotton was shipped as the property of the firm, to be applied to the payment of its debts.

In Louisiana, the right of the lessor to follow the property removed from the leased premises cannot be enforced after the lapse of fifteen days, nor then unless the things removed continue to be the property of the lessor, and can be identified, (C. C. 2705 and 2709). In this case, the title of the lessee in the cotton was gone, and after its arrival in New Orleans, was sold, confusedly with other cotton, in a lot of nine hundred and forty two bales.

The removal of this cotton from the leased premises was not fraudulent, it was delivered in the usual course of trade to L. C. Bryan & Bro., who, no doubt, as country store-keepers, furnished supplies to the lessee and paid the wages of the laborers engaged in the cultivation of the crop.

The cotton, in fact, was shipped to Louisiana with the knowledge of the lessor, whose agent pretends that J. L. Harris & Co., promised to pay the rent out of the proceeds of sale.

That the lessor's privilege, or right of pledge, is lost if no action be taken within fifteen days to secure it, was decided in Farnet vs. Creditors, 8 La. An. p. 372.

The rights of J. L. Harris & Co. are to be determined by the Louisiana law, which is expressed in the following Articles of the Code, and the provisions of the pledge act of 1874 :

Civil Code. Art. 3247. "Every consignee or commission agent who has made advances on goods consigned to him, or placed in his hands to be sold for account of the consignor, has a privilege for the amount of these advances, with interest and charges on the value of the goods, if they are at his disposal in his stores, or in a public warehouse, or if, before their arrival,

he can show, by a bill of lading, or letter of advice, that they have been dispatched to him.

"This privilege extends to the unpaid price of the goods which the consignee, or agent, shall have thus received and sold.

"Every consignee, commission agent or factor shall have a privilege, preferred to any attaching creditor, on the goods consigned to him for any balance due him, whether specially advanced on such goods or not; provided, they have been received by him, or an invoice or bill of lading has been received by him previous to the attachment; provided, that the privilege established by this article shall not have a preference over a privilege pre-existing on the goods aforesaid, in behalf of a resident creditor of the State."

ACT OF 1874—No. 66.

SEC. 2. "*Be it further enacted, etc.*, That when any merchant, factor, or other person, has advanced money, property or supplies on cotton, sugar or other agricultural products, and the same has been consigned to him by ship, steamboat, vessel, railroad or other carrier, the said agricultural products shall be pledged to the consignee thereof from the time the bill of lading thereof shall be put in the mail or put into the possession of the carrier for its transmission to the consignee, and the right of pledge shall be perfect, with the right of sale of said property, which shall be fully vested in said consignee, with the right to appropriate the proceeds of sale to the payment of the amount due for such advances as may have been made thereon; provided, that nothing herein shall be so construed as to defeat or lessen the privileges of the laborers and landlords in this State for wages and rent, as now existing by law."

SEC. 3. "*Be it further enacted, etc.*, That all merchants, factors and others who may have a general balance of account, or any sum of money due them by any consignee or other person, sending them cotton, sugar or other agricultural products for sale at the port of New Orleans, or at any town or city, in the State, shall have a pledge upon all such property consigned or sent to them by ship, vessel, railroad or other carrier from the time the bill of lading or receipt therefor by the carrier is deposited in the mail or given to the carrier for transmission, which pledge shall be perfect with the right of sale of said property which shall be fully vested in said consignee, with the right to appropriate the proceeds of sale to the payment of the amount due such consignee; provided, that nothing herein shall be so construed as to defeat or lessen the privilege of the laborers and landlords in this State for wages and rent as now existing by law."

The privilege accorded by the Code secured to the factor any advances made by him or any general balance of account.

Cater vs. Merrill, 16 An. 138.

After the adoption of the Constitution of 1868, the Supreme Court of Louisiana held that Article 123 of the Constitution required all privileges to be recorded, and therefore, that the factor's privilege was not valid as against third persons until it was registered.

Loeb vs. Blum, 25 A, 233.

White vs. Bird, 23 A. 270.

To obviate the difficulty resulting from the decision of the Loeb case in 1873, the pledge law of 1874 was enacted.

The Supreme Court had decided that the lessee had not only a privilege, but a *right of pledge*, and that the constitution did not require the registration of a pledge.

Johnson vs. Tacneau, 23 A. 454.

So the Act of 1874 conferred on the factor *in addition to the privilege* accorded to him by the Code, a right *of pledge*.

The Constitution of 1879 dispensed with the registration of privileges on movable property.

Art. 177 of that Constitution, declares that "Privileges on movable property shall exist without registration for the same, except in such cases as the General Assembly may prescribe by law, *after the adoption of this Constitution.*"

No law has been passed on the subject since 1879.

The privilege accorded by the Code is entitled to preference over any pre-existing privilege on the goods unless such privilege exists in behalf of "*a resident creditor of this State.*"

The privilege attaches on *receipt* of the letter of advice, or the bill of lading.

But the right of pledge, given by the Act of 1874, attaches "from the time the bill of lading, or receipt therefor by the carrier, is deposited in the mail, or given to the carrier for transmission, which pledge shall be perfect, *with the right of*

sale, of said property, which shall be fully vested in said consignee, *with the right to appropriate* the proceeds of sale to the amount due such consignee," etc.

The only reservation in favor of other liens is in favor of "laborers and landlords *in this State, for wages and rent, as now existing by law.*"

The landlord's privilege is defeated if the goods are removed from the leased premises, and the lessor allows fifteen days to elapse without taking action. If the goods are sold within the fifteen days the privilege of the lessor is extinguished by the sale.

The policy of Louisiana as indicated in the Code, and in the Act of 1874, has been constantly adhered to. No foreign lien on movable property has ever been enforced on such movables, when brought here, if the rights of domestic creditors are affected thereby. Indeed, privileges or liens on personal property, enacted by foreign laws, are not recognized in Louisiana when the property is brought within its jurisdiction. In Lee vs. Creditors, (2 La. An. p. 603), Chief Justice Eustis, speaking for the Court says:

"That a failure to acknowledge or enforce liens or privileges on movables, enacted by foreign laws, cannot be considered as derogating from the comity which prevails among States, in relation to the effect to be given to foreign law, is obvious. A nation, within whose territory personal property is found, has as entire jurisdiction over it, while there, as it has over immovable property. Its exercise, for all purposes, is a question of policy, and may be co-extensive with its authority over the latter. Civil Code, Art. 9; Story Craft. L. sec. 556; Penny vs. Christmas, 7 Rob. p. 499; Harper vs. Scarbrough, 2 A, 377."

In that case the Court refused to recognize a lien on a steamboat, enacted by a Kentucky statute, and relied on Harrison vs. Sterry, 5 Cranch. 298, as well as Smith vs. Union Bank, 5 Peters, 523.

The doctrine was very emphatically announced in Hughes vs. Klinginder, (14 La. An. 845). In that case the Court refused to recognize a foreign deed of trust on a ship, and relied

on previous decisions, that liens created by foreign laws on personal property, do not follow the property and cling to it in Louisiana.

Harned vs. Christmas, 4 An. 312.
Wickham vs. Levistone, 11 An. 702.
Succession of Broderick, 12 An. 522.
Swazy vs. Steamer Montgomery, 12 An. 800.

In Delop vs. Windsor (26 La. An. p. 186), the Court refused to recognize or to enforce in Louisiana, a crop lien or chattel mortgage on cotton produced in Mississippi.

The policy of the State as to mortgages of ships, steamboats and other vessels, was changed in 1869, in consequence of the decisions of this Court in White & Brook vs. Smith (7 Wall. 646), and Aldrich vs. Ætna Company, 8 Wall. 491.

The Act of 1869, incorporated into the revised statutes of 1870, Section 2393, declares valid mortgages of ships or vessels of the United States, if recorded according to the laws of the United States, and if of a foreign State, according to the laws of such State.

But the law as to all other foreign chattel mortgages or liens, remains unchanged.

Such being the policy of Louisiana, I know of no rule of comity which requires her courts to respect extra-territorial liens on personal property brought within the State.

Green vs. Van Buskirk, 7 Wall. 151.

If the Courts are not bound to respect such extra-territorial liens, the citizens of the State, in dealing with citizens of other States, in regard to personal property sent here, are not required to notice liens created by the foreign law. The case is stronger where the liens are not the result of voluntary agreement, and are secret in the sense that no registration is necessary to preserve them, and are created by statutes of which the citizens of Louisiana have no knowledge.

The citizens of the state are justified in disposing of per-

sonal property within the limits of the state, according to the laws of the state, and such disposition is binding everywhere.

Pollock, C. B., in Cammell vs. Sewell, 3 H. & N. 638.
Affirmed in Exchequer Chamber, 5 H. & N. 728.
Harvey vs. Locomotive Works, 93 U. S. 671.
The Marina, 19 Fed. R. 762.

In McCabe vs. Blymry, (9 Phila. 615,) there was a controversy with respect to the rights of a mortgagee under a chattel mortgage; the mortgage had been made and recorded in Maryland, where the chattel was when the mortgage was given, and by the law of Maryland was valid though the mortgagor retained possession. The chattel was afterwards brought into Pennsylvania, and the Pennsylvania Courts held that the mortgage, though valid in the State where it was made, would not be enforced by the Courts of Pennsylvania, as against a creditor or purchaser, who had acquired rights in the property after it had been brought to that State; that the mortgagee, by allowing the mortgagor to retain possession of the property and bringing it into Pennsylvania and exercise notorious acts of ownership, lost his right, under the mortgage as against an intervening Pennsylvania creditor or purchaser, on the ground that the contract was in contravention of the law and policy of the State.

Similar doctrine is maintained in Marion Safe Co. vs. Norton, (48 N. J. L. 417), and Parr vs. Brady, 8 Vroom, 201.

The Supreme Court of Louisiana decided in 1824, that "the municipal laws of a country has no force beyond its territorial limits, and when an other government permits them to be carried into effect within her jurisdiction, she does so upon a principle of comity. In doing so, care must be taken that no injury is inflicted on her own citizens, otherwise justice would be sacrificed to courtesy; nor can the foreigner or stranger complain of this, if he send his property within a jurisdiction different from that where he resides, he impliedly submits to the